TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 198.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. TOWSON, J. C. KENNEDY CAMPBELL, MARY L. I. CAMPBELL, AND MARY KENNEDY CAMPBELL, COMMITTEE OF WILLIAM H. CAMPBELL, APPELLANTS,

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 22, 1897.

(16,726.)

164
664

(16,726.)

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CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

BLANCHE K. TOWSON *et al.*, Appellants,
vs.
CHRISTIANA V. MOORE *et al.* } No. 678.

a Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.*
vs.
CHRISTIANA V. MOORE *et al.* } No. 17306. In Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed April 16, 1896.

In the Supreme Court of the District of Columbia.

APRIL 13TH, 1896.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. TOWSON, J. C. Kennedy Campbell, Mary L. I. Campbell, Mary Kennedy Campbell, Committee of William H. Campbell,
vs.
CHRISTIANA V. MOORE, JULIA A. RUSSELL, FREDERICK L. MOORE, Alexander W. Russell, Gertrude Fry, and Infant; Edith Fry, Infant.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiffs show as follows:

1.

That they are residents of the District of Columbia and sue in their own right.

2.

The defendants, with the exception of Alexander W. Russell and Julia A. Russell, who reside in Philadelphia, Pa., are resi-
2 dents of the District of Columbia and, with the exception of Frederick L. Moore and Alexander W. Russell, are sued in their own right, and they are sued as executors of the will of Mary I. Campbell, deceased.

3.

William H. Campbell and Mary I. Campbell, his wife, were residents of the District of Columbia, and had born of their marriage, who survived infancy, three children—Leonidas, their only son, and the defendants Christiana V. Moore, who intermarried with the defendant Frederick L. Moore, and Julia A., who intermarried with the defendant Alexander W. Russell.

4.

The said Leonidas intermarried with the plaintiff Mary Kennedy Campbell, and left surviving him seven children—the plaintiff Blanche K., who has intermarried with Dorsey E. W. Towson; Edith G., who has intermarried with Frederick W. Graham; Nannie C., who has intermarried with Richard M. Towson; John C. K. Campbell, Mary L. I. Campbell, William H. Campbell, of whom the plaintiff Mary K. Campbell is committee, and May, who intermarried with Henry D. Fry and who has died, leaving surviving her two infant children, the defendants Gertrude Fry, aged eleven years, and Edith Fry, aged nine years.

5.

The said William H. Campbell and Mary I. Campbell were excellent people, devoted parents, and confided to their beloved children their purposes and intentions in respect to the disposition of their property, always declaring that it should be equally divided between their three children, Leonidas, Virginia, and Julia.

3 6.

For the purpose of carrying out this intention the said William H. Campbell, on the 16th day of March, 1878, made and published his last will and testament, by which he (among other specific legacies) bequeathed to each of his daughters, Julia Anna and Christiana Virginia, five thousand dollars, these bequests being for the purpose of giving to each of his daughters a sum which would equal benefits which he had conferred upon his son, Leonidas. He then devised and bequeathed to his wife, Mary I. Campbell, all the residue of his estate in the event that she should survive him; but if not, he gave and bequeathed the same and every part thereof to his three children, Julia Anna, Leonidas, and Christiana, in equal shares, to be divided equally between them, and if he should survive either of his said children, the part of such child to go to the children of such child in equal shares or proportions, the said devise to his wife of the

property in fee-simple being for the purpose of making her independent of her children and insuring to her during her old age the filial respect and conduct which she so well merited, at the same time indicating to her his will and desire as to the disposition she should make of the property by providing that if she should die before him that the property devised to her should be equally divided between their three children.

7.

The son, Leonidas, died before his father. The wife, Mary I. Campbell, survived her husband, who died on the 21st day of May, 1881, and on the 26th day of May, 1882, she made and published her last will and testament, by which (after some specific
4 legacies) she devised and bequeathed all of the residue of her estate to be equally divided between her aforesaid two daughters and the children of her deceased only son, Leonidas, equally, one third to each of the said daughters, and the other third to the children of her deceased son. She devised all of her real estate to her executors, Frederick L. Moore and Alexander W. Russell, to be sold and the proceeds disposed of as a part of the residum of her estate. This will was in conformity to the aforesaid understanding and agreement and for the purpose of carrying out the terms and provisions of the will of William H. Campbell. (A copy of each of the said wills is filed herewith and prayed to be made a part of this bill.)

8.

The defendants Frederick L. Moore and Alexander W. Russell qualified as executors of both of said wills and filed an inventory of the estate of William H. Campbell, amounting to $49,030.90, and also an inventory of the estate of Mary I. Campbell, amounting to $33,373.50. In the former inventory the stocks and bonds were appraised at their par value, while in the latter the stocks and bonds which appeared in that inventory were appraised at their market value, which was considerably in excess of the par value. A copy of each of said inventories is filed herewith and prayed to be read as part of this bill.

9.

By the will of William H. Campbell he bequeathed an annuity of five hundred dollars to his sister Eloise, and the said Moore and Russell, executors, set aside thirteen thousand of the registered bonds of the United States for the purpose of applying the interest
5 thereon to the payment of the said annuity. The said Eloise survived her brother, William H. Campbell, and although these said registered bonds were a part of the estate devised to Mary I. Campbell by her said husband the said executors did not include the said bonds in the inventory of her estate which they furnished to the court, and although the said Mary I. Campbell survived the said Eloise seven years the said executors never filed in this court any memorandum or copy of the transfer of the said

bonds to the said Mary I. Campbell until after they were notified that this suit was to be instituted.

10.

At the time of the death of the said Eloise the said Mary I. Campbell was eighty-three years old, and had since the death of her husband been residing alternately with her two daughters. She was a lady of simple tastes and economical habits and her annual income of about $2,400 was greatly in excess of her personal expenditures, and the plaintiffs are informed and believe, and upon such belief aver, that a large portion of the said income was given to her said daughters by way of advances.

11.

On the 5th day of October, 1885, five days after the death of the said Eloise, the said Moore and Russell, as executors of the last will and testament of William H. Campbell, transferred on the books of the Government the aforesaid $13,000.00 of registered bonds to Mary I. Campbell, and upon the same books there appears, as of date the 6th day of October, 1885, the transfer by the said Mary I. Campbell of $6,500.00 of the said bonds to each of her said daughters. At the time of the said transfer the bonds were selling at a premium and were worth about $15,000.00.

6 12.

The plaintiffs further aver that other valuable securities to a large amount appear upon the inventory of the estate of William H. Campbell which do not appear upon the inventory of the estate of Mary I. Campbell; amongst others, three 3.65 District of Columbia bonds of $1,000.00 each, four bonds Philadelphia, Wilmington and Baltimore R. R. Co. for $1,000.00 each.

13.

In accordance with the provisions of the will of the said Mary I. Campbell, these bonds were bequeathed equally to her two daughters and to the children of her deceased son, Leonidas, and this unseemly haste is accounted for by the fact that if the said Mary I. had died before the aforesaid transfer the intention of both William H. and Mary I. Campbell, as declared in their respective will-, would — have been carried out.

14.

The plaintiffs have no personal knowledge of the circumstances under which the aforesaid transfers were made to the said daughters and would prefer to aver that the said transfers were made voluntarily and of her own free will, and without the control and undue influence of the said daughters and their respective husbands, executors and trustees, and, in view of the fact that they have no such personal knowledge, aver, as one aspect of their right to relief, that, if it be established that the said transfers were voluntary on the

part of the said Mary I., then such transfers were in harmony with the terms of the will and were advancements to her said
7 daughters respectively, and *pro tanto* an ademption of the legacies bequeathed to them respectively and must be accounted for as such in the final settlement of the estate.

15.

But inasmuch as the plaintiffs are informed and believe, and upon such belief aver, as another aspect for relief in the premises, that the said transfers were not the voluntary act of the said Mary I. Campbell, but, so far from being such, were the result of the undue influence and importunate and incessant demands of the said Julia A. Russell and Christiana V. Moore, aided and abetted by their respective husbands, the said Frederick L. Moore and Alexander W. Russell, whose fiduciary relations to the said Mary I. Campbell gave them controlling influence over her, and at the same time gave them the opportunity to violate the duty which the will of Mary I. Campbell imposed upon them as executors of the said will to the other legatees under the said will, the children of the said Leonidas, the said executors being at the time of the said transfer fully informed of the terms and provisions of the said will.

16.

The plaintiffs further show unto the court that the estate of the said Mary I. Campbell has not been finally settled; that there remains to be sold by the said executors and trustees very valuable real estate, known as 610 E street N. W., devised to them to be sold and the proceeds of such sale to be equally divided between the said Julia and Christiana and the said children of Leonidas.

Prayers.

The premises being considered, the plaintiffs pray as follows:

8 1.

That the defendants may be required to answer the allegations of this bill as if specially interrogated thereunto, the plaintiffs hereby expressly waiving the oath to said answers.

2.

That the real estate devised by the said Mary I. Campbell not yet sold may be ordered to be sold.

3.

That upon the final settlement of the executorial accounts of the said Frederick L. Moore and Alexander W. Russell the said $13,000.00 of registered bonds may be accounted for at their market value and charged to the said Christiana V. Moore and Julia A. Russell, and that the said executors, if they shall claim that the

securities appearing upon the inventory of the estate of William H. Campbell and not appearing upon that of the estate of Mary I. Campbell were sold by them and reinvested in securities which do appear upon the inventory of the estate of Mary I. Campbell, they shall in the accounting to be had state specifically what securities they sold, and at what price, and the securities in which they reinvested, and what they paid respectively for the same.

4.

That the court will grant such other and further relief as may be deemed meet in the premises.

5.

That a guardian *ad litem* may be appointed for the infant defendants.

6.

That process may issue commanding the defendants,
9 Christiana V. Moore, Julia A. Russell, Frederick L. Moore, Alexander W. Russell, Gertrude Fry, and Edith Fry, to appear and answer the exigencies of this bill.

BLANCHE K. TOWSON,
EDITH G. GRAHAM,
NANNIE C. TOWSON,
J. C. KENNEDY CAMPBELL,
MARY L. I. CAMPBELL,
MARY K. CAMPBELL,
Committee of William H. Campbell.

The defendants to this bill are: Christiana V. Moore, Julia A. Russell, Frederick L. Moore, Alexander W. Russell, Gertrude Fry, and Edith Fry.

10 EXHIBIT WITH BILL.

Filed April 16, 1896.

Inventory of the Personal Estate of Mary I. Campbell, Deceased, Returned by Frederick L. Moore, One of the Executors, on November 16, 1893.

Page 1.

1 note dated July 22nd, 1892, for 90 days, 6%, and drawn by Robert B. Tenney, for $1,000, appraised @	$1,000
(And secured by 100 shares of Masonic Hall Asso. stock.)	
1 cert., No. 345, for 25 shares, of $5 each, of the Columbia Fire Ins. Co., appraised @ 12.50..... .. .	312 50

1 certificate, No. 134,960, for 100 shares,
1 " " 444,180 " 2 "

102 "

of 50 each, of the Pennsylvania R. R. Co., appraised @ 50.. 5,100

1 certf., No. 417, for 5 shares,
1 " 434, " 4 "
1 " 436, " 5 "
1 " 471, " 1 "
1 " 485, " 4 "

19 "

of the Farmers' and Mechanics' National Bank of Georgetown, D. C., appraised @ 190 3,610

10,022 50

11 Page 2.

1 certf., No. 111, for 4 shares,
1 " 227, " 2 "
1 " 218, " 5 "
1 " 244, "10 "
1 " 250, " 5 "

26 "

of the National Bank of the Republic, appraised @ 240 6,240

1 certf., No. 1343, for 40 shares, of 50 each, of the Metropolitan R. R. Co., appraised @ 71 2,840

1 certf., No. 850, for 25 shares, of $5 each, of the Nat'l Union Insurance Co., appraised @ 14.... 350

1 certf., No. 415, for 10 shares,
1 " 416, " 4 "

14

of $100 each, of the German-American Fire Insurance Co., appraised @ 140 1,960

1 certf., No. 258, for 12 shares,
1 " 339, " 10 "
1 " 342, " 8 "

30 "

of $100 each, of the Arlington Fire Insurance Co., appraised @ 150 4,500

$15,890 00

12 Page 3.

1 certf., No. 832, for 53 shares, of 25 each, of the Potomac Insurance Company of Georgetown, D. C., appraised @ 75.....	3,975	
1 certf., No. 1635, for 25 shares,		
1 " 5379, " 10 "		
35		
of 20 each, of the Washington Gas Light Co., appraised @ 48.	1,680	
1 bond, No. 19, series "A," for $100, of the Washington Gas Light Co., 6 % registered imp't, due July 1st, 1927, appraised @ 116	116	
1 bond, No. 40, series " B," for $500, 6% registered improvement bond, due July 1st, 1927, of Washington Gas Light Company, appraised @ 117.....	585	
1 certf. of indebtedness, 6 %, No. 187, for $200,		
" 1135, " 20,		
of the Washington Gas Light Company, appraised @ 125.....	275	
		$6,631

13 Page 4.

1 certf., No. 140, for 6 shares, of 100 each, of the American Press Asso., appraised @ 95.	570 00	
1 demand note dated January 6, 1886, for $250, and drawn by Julia C. Russell, one of the legatees, appraised @.....	250	
1 old desk	8	
1 old folding chair.....	2	
		$830

Contents page 1	$10,022 50
" " 2	15,890
" " 3	6,631
" " 4	830
	$33,373 50

Sworn — and subscribed by Frederick L. Moore, one of the executors of the estate of Mary I. Campbell, deceased, on the 14 day of November, 1893.

14 EXHIBIT WITH BILL.

Filed April 16, 1896.

F. L. Moore, A. W. Russell, and Jordan W. Maury, Executors, in Ac. with Estate of W. H. Campbell.

DR.

1881.			
May	28.	For 25 shares Washington Gaslight stock, par value	$500 00
		For 4 bonds Philadelphia, Wilmington & Balto. R. R., ea. $1,000	4,000 00
		For 100 shares Pennsylvania R. R. Co., $50	5,000 00
		For 1 note of F. L. Moore	2,000 00
		1 do. do.	1,000 00
		1 do. do.	2,000 00
		7 U. S. bonds, 5 p'r ct., ea. $1,000	7,000 00
		U. S. do. 4½ "	5,000 00
		U. S. do. 4 "	8,000 00
		38 shares Potomac Ins. Co., 25	950 00
		40 shares Metropolitan R. R., cost	1,035 00
		12 shares Arlington Ins. Co.; par value, $100	1,200 00
		3.65 D. C. registered bonds	3,000 00
		Bills receivable (in Bank of Republic for col.)	5,771 09
		Cash in Bank of Washington	144 85
		Cash in Bank of Republic	838 23
June	1.	" " interest on U. S. 4½	56 25
"	2.	" premium on $7,000 U. S. 5 per ct. bonds—	
"	"	Sold to Riggs & Co. at 101	70 00
"	"	Premium on $1,000 3.65 D. C. bonds sold to Riggs & Co. @ 107¾	77 50
"	4.	Dividend, Pennsylvania R. R.	200 00
15			
"	4.	Sale of allotment, 13 shares Penna. R. R.	208 00
"	"	Cash for John T. Kelly's note	979 48
			49,030 40
		Balance down to credit of executors	50
			49,030 90

EXHIBIT WITH BILL.

Filed April 16, 1896.

I, William H. Campbell, of the city of Washington in the District of Columbia, gentleman, being in my usual health of body, and of sound and disposing mind, memory and understanding, considering the certainty of death, and the uncertainty of the time

thereof, and being desirous to settle my worldly affairs, and thereby be the better prepared to leave this world when it shall please God to call me hence do therefore make and publish this, my last will and testament in, manner and form following; that is to say.

First, and principally, I commit my soul into the hands of Almighty God, and my body to the earth to be decently buried at the discretion of my executors, hereinafter named, directing however, my said executors to pay to the clergyman who shall officiate on the occasion of my funeral the sum of *one hundred dollars;* and after all my debts are paid including funeral charges, I give, devise, and bequeath—as follows: (Having provided for my son Leonidas Coyle Campbell by establishing him in business as my successor to carry on the trade and merchandise as heretofore conducted by the late firm of Campbell & Son.)

Item 1, will, and direct and also give and bequeath to my
16 son Leonidas, any, and, all the household and kitchen furniture, books and so forth left in my house on E street in the aforesaid city at the time he took possession: (Having provided during my life for my two daughters Julia Anna C. Russell and Christiana V. Moore by giving to each of them an equal amount in value.)—

Item I proceed, to give and bequeath to my daughter Julia Anna C. Russell, the sum of (5000) *five thousand dollars*, and which legacy I direct my executors or the survivor of them to pay to my said daughter *Julia Anna*, within one year after my decease.

Item. I, also give and bequeath to my daughter Christiana Virginia Moore a like amount, of (5000) *five thousand dollars*, and which legacy I direct my executors or the survivor of them, to pay to my said daughter *Christiana* Virginia within one year after my decease.

Item. I give and bequeath to my grandson William Campbell Russell, if he shall survive me, my gold watch and chain;

Item I, give and bequeath to my sister Elouese S. Campbell, the sum of *five hundred dollars, per annum*, in and by equal quarterly payments during her natural life, which amount or annuity I leave to her as a legacy and as a token of my affection for her, and which legacy I direct my executors or the survivor of them to pay as requested, quarterly:

Item I give devise and bequeath unto my beloved wife, Mary I. Campbell all the rest and residue of my estate, real, personal or mixed. and all income of whatever character that I may be
17 possessed of at the time (over) of my decease, and all increase thereon, the same and every part thereof to be, and remain the absolute property and estate of my said wife, in fee simple, if she shall be living at the time of my decease; but, if she shall not survive me, then I give and bequeath the same and every part thereof, to my aforesaid three children, Julia Anna, Leonidas, and Christiana, and to their respective heirs as tenants in common, and in equal shares, to be apportioned equally between them; that if either of my said children die before me, then, I give and devise to the children of the child so dying, that may be living at the time of my decease and to their heirs as tenants in common, and in equal

proportions, the share or proportion of the said residue of my estate, real and personal hereinbefore devised to or intended for their father or mother, as the case may be;

Lastly, I do hereby constitute and appoint my son Leonidas C. Campbell and Frederick L. Moore, my son in law, executors, of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this and none other to be my last will and testament, and having full confidence in the integrity of my said executors, it is my desire that they shall not be required to give security for the performance of the trust I have committed to them:

In testimony whereof I have hereunto set my hand and affixed my seal this sixteenth day of March in the year of our Lord one thousand eight hundred and seventy-eight.

WM. H. CAMPBELL. [SEAL.]

Signed, sealed, published and declared by Wm. H. Campbell the above named testator as, and for his last will and testament,
18 in the presence of us, who at his request, in his presence, and in the presence of each other have subscribed our names as witnesses thereto.

C. A. JAMES.
EUGENE MORGAN.
CHAS. W. BLAZEY.

I, William H. Campbell, of the city of Washington in the District of Columbia, having heretofore made my last will and testament in writing bearing date the sixteenth day of March eighteen hundred and seventy-eight (as will more fully and at large appear from the aforegoing writing), being now desirous to make a slight alteration therein, do therefore make this my codicil thereto; and as since the execution of my said last will my beloved son, Leonidas C. Campbell named in said will as one of the executors thereof, has died, I do therefore by this my said codicil constitute and appoint Frederick L. Moore and Alexander W. Russell, my two sons-in-law, and Jourdan W. Maury executors of my said last will and testament in lieu of the persons therein named as executors thereof; but every other matter or thing in said last will and testament contained, I do hereby reaffirm, republish ratify, confirm and continue.

In testimony whereof I have hereunto set my hand and seal this seventh day of September in the year of our Lord one thousand eight hundred and seventy-eight.

WM. H. CAMPBELL. [SEAL.]

Signed sealed published and declared by the aforenamed Wm. H. Campbell as, and for a codicil to his last will and testament in the presence of us, who at his request and in his presence and in
19 the presence of each other have hereunto subscribed our names as witnesses thereto, this seventh day of September 1878.

C. A. JAMES.
EUGENE MORGAN.
CHAS. W. BLAZEY.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the foregoing is a true copy of the original will *and codicil* of *William H. Campbell*, deceased, [and the probate thereto],* filed and recorded in the office of the register of wills for the District of Columbia aforesaid, and also that the said will *and codicil*, after having been proven by the witnesses [whose name- appear in the foregoing probate],* was, by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the *27th* day of *May*, A. D. one thousand eight hundred and [ninety]* *eighty-one.*

In testimony whereof I hereunto subscribe my name [SEAL.] and affix the seal of the said supreme court, special term for orphans' court business, this *2nd* day of *January*, anno Domini *1896.*

J. NOTA McGILL,
Register of Wills for the District of Columbia and ex Officio Clerk of the said Special Term for Orphans' Court Business.

20 EXHIBIT WITH BILL.

Filed April 16, 1896.

I, Mary I. Campbell, at present residing in Georgetown, in the District of Columbia, do make publish and declare this to be my last will and testament, viz:

First. I nominate constitute and appoint my two sons in law, Alexander W. Russell and Frederick L. Moore, executors of this my last will and testament, and direct them promptly to pay my just debts, and to enable them to complete the prompt settlement of my estate, and for no other purpose I devise to them, and their heirs, in fee simple, the title to all my real estate, with directions to sell and convey the same, in fee simple, at public or private sale, to the best advantage, and divide the proceeds as part of the residu*m* of my estate.

Second. I give and devise, absolutely, to "The Congregation of the First Presbyterian Church of Washington," in the District of Columbia, the sum of one thousand dollars.

Third. I give and devise to said congregation the further sum of five hundred dollars—two hundred and fifty dollars thereof for the use and benefit of the Sunday school of said congregation and two hundred and fifty dollars thereof for the use and benefit of the sewing school of said congregation.

[* Words enclosed in brackets erased in copy.]

Fourth. I give and devise, absolutely, to the "Women's Christian Association" of the city of Washington, District of Columbia, the sum of one thousand dollars, to be equally divided for the use and benefit of the *home* proper, and the *Foster home*, of said association.

21 *Fifth.* I give and devise, absolutely, to "The Trustees of the Presbyterian Congregation in Georgetown," in the District of Columbia the sum of one hundred dollars, for the use and benefit of the Sunday school of said congregation.

Sixth. I give and devise absolutely to Mrs. Britannia W. Kennon, president of the board of managers, of the *Aged Women's Home*, in Georgetown, District of Columbia, the sum of one hundred dollars, for the use and benefit of said home.

Seventh. I give and devise to Mrs. Eliza Ingle, widow of my brother John P. Ingle, the sum of two hundred dollars, should she survive me, otherwise, the same is to become a part of the residu*m* of my estate.

Lastly. I give devise and bequeath all the rest and residue of my estate, real and personal, to be equally divided between my two daughters Juliana C. Russell and Virginia C. Moore, and the children of my deceased son, Leonidas C. Campbell, their heirs and assigns, that is to say, one third of said residu*m* to my daughter Juliana C. Russell, her heirs and assigns, one third thereof to my daughter Virginia C. Moore, her heirs and assigns, and the remaining third of said residuum to the seven children viz: May—Blanche—Edith—William—Nannie—Kennedy and Mary, of my deceased son Leonidas C. Campbell, to be equally divided between said seven grandchildren, share and share alike, with the right of survivorship, in the case of death before arriving at legal age, and without issue, among any of said grandchildren, so dying.

In testimony whereof I have hereunto set my hand and seal this twenty-sixth day of May, A. D. eighteen hundred and eighty-two.

MARY I. CAMPBELL. [SEAL.]

22 Signed, sealed, published & declared by the above-named testatrix Mary I. Campbell, as and for her last will and testament, in our presence, who, at her request, in her presence and in the presence of each other, have hereto set our names as attesting witnesses hereto.

LEVIN S. FREY.
JOSEPH B. WELLS.
WILLIAM P. MAYFIELD.

DISTRICT OF COLUMBIA, *To wit:*

On the 10th day of August, 1893, came Alexander W. Russell and Frederick L. Moore and made oath on the Holy Evangels of Almighty God that they do not know of any will or codicil of Mary I. Campbell, late of said District, deceased, other than the aforegoing instruments of writing dated May 26, 1882, & Dec. 11, 1889, and that said F. L. Moore received the same from the said testatrix

about the time of their execution, and said F. L. Moore has retained custody thereof ever since, and said Mary I. Campbell died on or about the 6th day of August, 1893.

A. W. RUSSELL.
F. L. MOORE.

Sworn to and subscribed before me.

L. P. WRIGHT,
Register of Wills for the District of Columbia.

23 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

AUGUST 10TH, 1893.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Levin S. Frey and William P. Mayfield, two of the subscribing witnesses to the foregoing last will and testament of Mary I. Campbell, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of their apprehension, of sound and disposing mind and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testatrix, and in the presence of the other subscribing witness thereto, and that *he* heard the said testator request Joseph B. Wells to witness this will, and *he* saw said Joseph B. Wells sign his name as attesting witness thereto in the presence of said testatrix, and, further, that it is well known to them that said Joseph B. Wells has since departed this life.

Test:

L. P. WRIGHT,
Register of Wills.

24 PHILADELPHIA, PA., *December 11th*, 1889.

To the judge of the orphans' court, Washington city, D. C.:

It is my wish that no bond be required of the executors of my will, Alexander W. Russell and Frederick L. Moore. I have no debts.

MARY I. CAMPBELL.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

AUGUST 10TH, 1893.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Levin S. Frey and William P. Mayfield, who being duly sworn, made oath on the Holy Evangels of Almighty God that they were all well acquainted with Mary I. Campbell and familiar with her handwriting and signature, and that they verily

believe the signature, "Mary I. Campbell," to the annexed paper-writing, dated December 11th, 1889, is the genuine signature of said testatrix.

Test:

L. P. WRIGHT,
Register of Wills.

25 In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, Levi P. Wright, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the foregoing is a true copy of the original will and codicil of Mary I. Campbell, deceased, and the probates thereto, filed and recorded in the office of the register of wills for the District of Columbia aforesaid; and also that the said will and codicil, after having been proven by the witnesses whose names appear in the foregoing probates, *was* by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the tenth day of August, A. D. one thousand eight hundred and ninety-three.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' [SEAL.] court business, this 25th day of September, anno Domini 1893.

L. P. WRIGHT,
Register of Wills for the District of Columbia and ex Officio Clerk of the said Special Term for Orphans' Court Business.

26 *Subpœna.*

Issued April 16th, 1896.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.*, Complainants,
against
CHRISTIANA V. MOORE *et al.*, Defendants. } No. 17306, Equity Docket 40.

The President of the United States to Christiana V. Moore, Julia A. Russell, Frederick L. Moore, Alexander W. Russell, Gertrude Frey, and Edith Frey, defendant-:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness the Honorable Edward F. Bingham, chief [SEAL.] justice of said court, the 16th day of April, A. D. 1896.

J. R. YOUNG, *Clerk.*
By R. J. MEIGS, JR.,
Assistant Clk.

27 MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

I acknowledge service for defendants Nos. 1, 2, 3, 4.
CHAS. H. CRAGIN.
Ap'l 16, '96.

Not executed May 5, '96.
ALBERT A. WILSON, *Marshal.*

Joint and Several Answer of Defendants Frederick L. Moore & Alexander W. Russell, Executors.

Filed May 26, 1896.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.* *vs.* CHRISTIANA V. MOORE *et al.* } In Equity. No. 17306, Docket 40.

The joint and several answer of the defendants Frederick L. Moore and Alexander W. Russell, executors of the last will and testament of Mary I. Campbell, deceased, to the bill of com-
28 plaint of the above-named complainants.

These defendants, now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereto, or unto so much or such parts thereof as they are advised is or are material or necessary for them or either of them to make answer unto, answering, say:

1st. They admit that the complainants are residents of the District of Columbia.

2nd. They admit the respective residences of the defendants to be as stated in the second paragraph of said bill.

3rd. They admit the facts alleged in the third paragraph of said bill.

4th. The facts alleged in the fourth paragraph of said bill are admitted.

5th. They admit that William H. Campbell and Mary I. Campbell, his wife, were most excellent people and devoted parents, and were undoubtedly very confidential in their relations to each other, but they have no personal knowledge of the other matters alleged in the fifth paragraph of said bill.

6th. From information and belief they deny it was for the purpose of carrying out any such intention as alleged in the preceding

paragraph of said bill that the said William H. Campbell,
29 on March 16th, 1878, made and published his last will and testament, by which he (among other legacies) bequeathed to each of his daughters, Julia Anna and Christiana Virginia, five thousand dollars, and from information and belief they deny that the same was intended for the purpose of giving to each of said daughters a sum which would equal benefits that he had conferred upon his son Leonidas, nor does said will make any such pretension.

They admit that he devised and bequeathed to his wife, Mary I. Campbell, all the rest and residue of his estate, the same, according to said will, "to remain the absolute property and estate of my said wife, in fee-simple, if she shall be living at the time of my decease. But if she shall not survive me, then I give and bequeath the same and every part thereof to my aforesaid three children, Julia Anna, Leonidas and Christiana, and to their respective heirs, as tenants in common, in equal shares to be apportioned equally between them. That if either of my said children die before me, then I give and devise to the children of the child so dying, that may be living at the time of my decease and to their heirs as tenants in common, and in equal proportions, the share or proportion of the said residue of my estate, real and personal hereinbefore devised to or intended for their father or mother, as the case may be."

As to the purpose of said devise to his wife of the property in fee-simple, these defendants know nothing except what is disclosed by said will, but from their intimate acquaintance with both William H. Campbell and his wife, Mary I. Campbell, and from their personal knowledge of the effectionate relation that always existed between the two daughters and their parents, it certainly
30 was not necessary, in order to insure to his wife that filial respect and conduct which she so well merited and which it had not only always been the pleasure of her daughters to bestow upon her, but it likewise had always been regarded as a pleasure for these defendants, her sons-in-law, to share in. She was not only the devoted and beloved mother of their wives, but also one — the loveliest Christian characters they ever knew.

And they deny upon information and belief that said William H. Campbell intended thereby to indicate to his wife his will and desire as to the disposition she should make of the property, or that the property should be equally divided between their children.

7th. They admit that the son Leonidas died before his father; that the wife, Mary I. Campbell, survived her husband, who died May 21, 1881; that Mary I. Campbell, on May 26, 1882, made and published her last will and testament, by which (after some specific legacies) she devised and bequeathed all of the residue of her estate to be equally divided between her two daughters and the children and descendants of her deceased son, and that she devised all of her real estate to her executors, these defendants, to be sold and the proceeds disposed of as part of the residuum of her estate. They deny, however, from information and belief, that her said will was made in conformity to any understanding and agreement had with

her husband, or for the purpose of carrying out the terms and provisions of the will of William H. Campbell.

8th paragraph They deny, as inferred from the allegations of the eight- of said bill, that they alone qualified as executors
31 of both of said wills, Jourdan W. Maury being coexecutor with them under the will of William H. Campbell, and duly qualified as such and united with them in the inventory filed of the estate of William H. Campbell, amounting to $49,030.90, in which inventory the stocks and bonds were scheduled at their face or par value, just as scheduled by said testator himself, and, with the exception of what was sold by said executors to pay debts and legacies and retained and set aside to meet the annuity to the testator's sister, Eloise, were turned over by said executors, Moore, Russell, and Maury, to the said Mary I. Campbell at the same valuations, they not deeming it necessary to have said stocks and bonds appraised at their market value because said executors had merely to pay the debts and legacies, set aside a sufficient sum to insure the prompt payment *quarterly* of the annuity of $500 to the said Eloise, and turn the residue over to the said Mary I. Campbell, all of which they did in about one month, said residue amounting at its face value to the sum of $23,626.07, as will appear from the copy of the account of said executors filed herewith and prayed to be taken and read as part of this their answer.

They admit that the inventory of the estate of Mary I. Campbell represented the then appraised market values of the different stocks and bonds, the total of which was in excess of the par values; but it was then necessary to so appraise them for the reason that they had to be distributed among a great many different persons, and the difference between their face and market values was not at all uniform. They file herewith a copy of their account and distribution of the personal estate of the said Mary I. Campbell and pray that the same may be taken and read as part of this their answer.

32 *9th.* They admit that by the will of William H. Campbell he bequeathed an annuity of five hundred dollars to his sister Eloise, and they and Jourdan W. Maury, as executors under said will, set aside for this purpose thirteen thousand dollars of the registered bonds of the United States ($8,000 4 per cent. and $5,000 4½ per cent.), then already standing in said testator's name on the books of the U. S. Treasury, and which yielded an annual income of about the amount of said annuity *quarterly*, as provided by said will should be paid to said Eloise, the difference ($11.25) between the interest so received each quarter ($136.25) and the amount of said annuity ($125) being paid to the said Mary I. Campbell. They admit that said Eloise survived her brother, William H. Campbell, and that she died about seven years previous to the death of Mary I. Campbell, and that they, as executors of the estate of Mary I. Campbell, did not include the said registered bonds in the inventory of her estate because said bonds did not at the time of the death of said Mary I. Campbell form any part of her estate, she having assigned and transferred them several years before, to wit,

October 6, 1885, to her two daughters. These defendants, as surviving executors of the estate of William H. Campbell, shortly after the death of the said Eloise assigned and transferred on the books of the U. S. Treasury said bonds to the said Mary I. Campbell, as it was their duty to do, and their duty as such executors then entirely ceased. The filing afterwards in the probate court of said District of a memorandum or copy of the transfer of said bonds to Mary I. Campbell was a mere matter of form which they thought had been done by them, and as soon as they learned that they had omitted to do this they at once, before the institution of this suit,
33 filed in said court a certificate from the proper officer of the Treasury, showing when and how said transfer had been made by them to the said Mary I. Campbell, and accompanied the same with a statement, under oath, by them of the facts in the case, a copy of which certificate and statement is filed herewith and prayed to be taken and read as part of this their answer.

10th. They admit that at the time of the death of said Eloise the said Mary I. Campbell was eighty-three years of age, and had, since the death of her husband, as she and her husband had frequently done before in his lifetime, been residing alternately with her daughters, who were the only surviving children, at the homes of these defendants, the said William H. Campbell, his wife, Mary I. Campbell, as well as his sister, the said Eloise, all having died at the home of the defendant Christiana Virginia Moore.

They also admit that the said Mary I. Campbell was a lady of simple tastes and economical habits, and that her income was greatly in excess of her own immediate personal expenditures or needs, but from information and belief they deny that a large or any portion of her income was given to her said daughters by way of advances. On the contrary, a large part of her income was devoted to helping the poor and contributing to charitable and benevolent objects and institutions of different kinds, in all of which she took great pleasure and interest.

11th. They admit that on October 5th, 1885, which was five days after the death of said Eloise, these defendants, as surviving executors of the last will and testament of William H. Campbell,
34 transferred and assigned on the books of the Treasury the said thirteen thousand dollars of registered bonds to the said Mary I. Campbell, as it was their duty to do, and they admit that she, on the following day, transferred to each of her said two daughters six thousand five hundred dollars of said bonds. They also admit that said bonds were selling at a premium aud were worth about fifteen thousand dollars.

12th. They admit that valuable securities to a large amount appear upon the inventory of the estate of William H. Campbell which (twelve years afterwards) do not appear upon the inventory of the estate of Mary I. Campbell, just as there are valuable securities to a large amount appearing upon the inventory of the estate of Mary I. Campbell which do not appear upon the inventory of the estate of William H. Campbell. These defendants aver that the duties of the executors—Moore, Russell, and Maury—of the estate of William

H. Campbell, with the exception of the formal transfer of said United States registered bonds to Mary I. Campbell, ceased and determined in June, 1881, as before stated, when they filed their account in the probate court of this District, showing the settlement of that estate, and that they had turned over to the said Mary I. Campbell in cash, stocks, bonds, &c., the residue thereof, amounting to twenty-three thousand six hundred and twenty-six $\frac{7}{100}$ dollars, after retaining the said thirteen thousand dollars in U. S. registered bonds, as aforesaid, to meet the quarterly annuity to the said Eloise. What the said Mary I. Campbell afterwards did with these different securities that she so received these said executors aver they have nothing whatever to do. Under the will of her husband said securities became absolutely her property, to do whatever she pleased with. She certainly had the right, without asking the permission of any of the parties to this suit, to exchange some securities for others, which were regarded as better investments, subsequently, and this, as a matter of fact, is what she did do. These defendants, then, while denying the right of the complainants to make the inquiry they do as to certain securities which appear upon the inventory of the estate of William H. Campbell and which do not for the reasons above stated appear upon the inventory of the estate of Mary I. Campbell, their duties as surviving executors under the will of William H. Campbell having long previous thereto ceased and said *executors* not having made said purchase or sales; aver as follows:

The three 3.65 District of Columbia bonds of the par value of $1,000 each were sold by the said Mary I. Campbell for.....	$3,507 50	
The present market value of which bonds being $3,270.		
The four bonds of the Philadelphia, Wilmington and Baltimore R. R. Co. were called in by said company and redeemed at their face value	4,000 00	
		$7,507 50

And the said Mary I. Campbell purchased in lieu of the same, with the addition of one hundred dollars in cash, the following securities, viz:

5 shares of the stock of the Farmers' & Mechanics' National Bank of Georgetown, D. C., at $165 per share.....	$825
10 shares of the stock of the National Bank of the Republic, D. C., at $155.50 per share.....	1,555
10 shares of the stock of the Arlington Fire Insurance Company, D. C., at $165.50 per share	1,655
8 shares of same at $165 per share.....	1,320
6 % bonds of the District of Columbia.....	672

Washington Gas Light Company scrip.....	30 50	
10 shares of the stock of the German-American Fire Insurance Company, D. C., at $155.50 per share.....	1,550	
		$7,607 50

Showing a clear gain thereby to the estate of Mary I. Campbell, according to the appraisement thereof, of $782.

13th. Supposing that the complainants refer to the $13,000 of registered U. S. bonds in the thirteenth paragraph of their bill, these defendants, while not admitting that these bonds were bequeathed equally to her two daughters and to the children of her deceased son, Leonidas, under the provisions of the will of Mary I. Campbell, aver that she knew full well, as explained to her by her husband, that the making of her will did not at all prevent her from doing whatever she saw proper with any part of her estate, real or personal, between the making thereof and the time of her death.

And they deny, as charged, that there was any unseemly haste in the transfer of said bonds by the executors to the
37 said Mary I. Campbell five days after the death of the said Eloise. On the contrary, they believed it was their duty, as surviving executors under the will of William H. Campbell, to make this transfer from his estate to his widow, Mary I. Campbell, at once upon the death of the said life annuitant, Eloise Campbell, and for this reason they made it; and they deny, as charged by innuendo, that said transfer was made in anticipation of the gift, made the next day by Mary I. Campbell to her two daughters, of said bonds; and these defendants aver that when they made the transfer and assignment to Mary I. Campbell they had not the remotest idea that she intended to or would give the said bonds to her daughters, and nothing was then further from their minds than such a thing being done by her.

14th. In answer to the 14th paragraph of said bill the defendant Alexander W. Russell of his own personal knowledge knows nothing of the facts and circumstances attending the transfer of said bonds by the said Mary I. Campbell to her two daughters, he not being then in Georgetown, where the said Mary I. Campbell at the time resided, but from information and belief he avers, with his coexecutor, Frederick L. Moore, that said transfers were made entirely voluntarily and of her own free will, without any request or suggestion even, in any way that they ever heard of, from either of said daughters, their wives, and certainly without any suggestion whatever from either of these defendants. They believe it was the free, unsolicited, and unconditional gift from a mother (then possessed of real and personal property worth nearly $100,000) who was most devotedly attached to her only surviving children, her
38 daughters, and who was in return, as she well knew, equally beloved by them, she well knowing, so she informed these defendants, that her husband had in his lifetime given, advanced, and paid out to and on account of his son Leonidas, in excess of

what he had given, advanced, and paid out to and on account of his daughters and beyond the amount of the legacies to them under his will, sums in the aggregate fully equal to half the value of said bonds, and she informed these defendants that she desired thus to equalize their shares; but they deny that the said Mary I. Campbell ever by word or act regarded or intended these gifts as advancements to her said daughters respectively and *pro tanto* an ademption of their distributive shares under the residuary clause of her will, and to be accounted for as such in the final settlement of her estate, and they, upon advice, deny that legally said gifts can be so considered.

15th. They deny, as stated by them in the preceding paragraph, that the said transfers were not the voluntary act of the said Mary I. Campbell; they deny that said gifts were the result of any undue or any other kind of influence except that of a mother's love for her only children and her desire to thus equalize their shares; they deny that there were any importunate and incessant or any other kind of demands ever made by them or either of them, alone, together, or aided and abetted by their respective wives, on the said Mary I. Campbell for anything whatever, or that their relation as executors or otherwise ever gave them any controlling or other undue influence whatever over her; and they deny that there was any violation by them of the duties which she reposed in them as executors of her said will or otherwise howsoever, and they
39 admit that the provisions of her will were known to them.

16th. They admit that the estate of Mary I. Campbell has not yet been finally settled, as there remains to be sold by said executors very valuable real estate, known as premises No. 610 "E" street N. W., in this city, devised to said executors to be sold and the proceeds equally divided between the said Julia and Christiana and the children and descendants of said Leonidas.

Said real estate, however, had previously, to wit, November 7th, 1895, been advertised and offered for sale at public auction by said executors, but as there were no bidders present the property was withdrawn and placed in the hands of the real-estate firm of Graham & Campbell (the former the husband of the complainant Edith G. Graham and the latter the complainant J. C. Kennedy Campbell) for sale privately, whenever a satisfactory offer could be obtained by them.

No offer being submitted by said firm, the said real estate was again advertised for sale by said executors before the filing of this suit, but at the request of the attorney for the complainants the proposed sale was withdrawn.

The only other real estate belonging to the said Mary I. Campbell—being premises No. 606 Pennsylvania avenue N. W., in this city—was sold at public auction by said executors November 7th, 1895, for twenty-six thousand five hundred dollars, which price all of said parties regarded as satisfactory, and the proceeds thereof were divided as above mentioned

These defendants, having fully answered, pray to be hence dismissed with their reasonable costs.

FREDERICK L. MOORE,
ALEXANDER W. RUSSELL,
Executors Estate of Mary I. Campbell, Dec.

CHAS. H. CRAGIN,
Sol'r for Def'ts.

40 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

FREDERICK L. MOORE.

Subscribed and sworn to before me this 23rd day of May, 1896.

JESSE W. RAWLINGS,
[SEAL.] *Notary Public, D. C.*

CITY AND COUNTY OF PHILADELPHIA, *State of Pennsylvania,* } *ss:*

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

ALEXANDER W. RUSSELL.

Subscribed and sworn to before me this 22nd day of May, 1896.

R. MEADE BACHE,
[SEAL.] *Notary Public.*

41 *Joint and Several Answer of Defendants Christiana V. Moore & Julia A. Russell.*

Filed May 26, 1896.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.* *vs.* CHRISTIANA V. MOORE *et al.* } In Equity. No. 17306, Docket 40.

The joint and several answer of the defendants Christiana Virginia Moore and Julia Anna Russell to the bill of complaint of the above-named complainants.

These defendants, now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereto, or unto so much or such parts thereof as they are

advised is or are material or necessary for them or either of them to make answer unto, answering, say:

1st. They admit that the complainants are residents of the District of Columbia.

2nd. They admit the respective residences of the defendants to be as stated in the second paragraph of said bill.

3rd. They admit the facts alleged in the third paragraph of said bill.

4th. The facts in the fourth paragraph of said bill are admitted.

42 *5th.* They admit that their father and mother were most excellent people and devoted parents, and were undoubtedly very confidential in their relations to each other, and in a measure confided to their children their purposes and intentions in respect to the disposition of their property, these defendants being informed from the declarations of their father that, in the event of his surviving their mother, in the distribution of his estate, after taking into account what he had in his lifetime given, advanced, and paid out to or on account of his three children, they were all to share equally; but up to the time — the gifts of the $6,500 in registered bonds hereinafter referred to, to each of these defendants, their mother had said nothing to them as to what she had done or intended to do with her property; and these defendants further say that they never inquired of either of their parents as to the disposition they intended to make or had made of their property.

6th. They deny it was for the purpose of carrying out any such intention, as alleged in the preceding paragraph of said bill, that their father on March 16th, 1878, made and published his last will and testament, by which he (among other legacies) bequeathed to each of these defendants, his daughters, five thousand dollars; and they deny that the same was intended for the purpose of giving to each of them a sum which would equal benefits that he had conferred upon his son Leonidas, nor does said will make any such pretension. On the contrary, said testator, who was a most careful, painstaking, and accurate business man, well knew, and so declared to his wife in the presence of his daughter, Christiana Virginia, that at the time of making his said will he had given, ad-

43 vanced, and paid out to and on account of his son Leonidas sums in the aggregate greatly in excess of, by many thousands of dollars more than said legacies, what he had given, advanced, and paid out to and on account of his said daughters.

They admit that he devised and bequeathed to his wife, Mary I. Campbell, all the rest and residue of his estate, the same, according to his said will, to "remain the absolute property and estate of my said wife, in fee-simple, if she shall be living at the time of my decease. But if she shall not survive me, then I give and bequeath the same and every part thereof to my aforesaid three children, Julia Anna, Leonidas and Christiana, and to their respective heirs, as tenants in common, in equal shares to be apportioned equally between them. That if either of my said children die before me, then I give and devise to the children of the child so dying, that

may be living at the time of my decease and to their heirs, as tenants in common, and in equal proportions, the share or proportion of the said residue of my estate, real and personal, hereinbefore devised to or intended for their father or mother as the case may be."

As to the purpose of said devise to his wife of the property in fee-simple, these defendants know nothing. It certainly was not necessary in order to insure to her during her old age that filial respect and conduct which she so well merited and which these defendants, her daughters, as well as their respective husbands, had always shown her, because she was their most devoted and beloved mother as well as one of the lov-iest Christian characters that ever lived; and they deny that their father intended to indicate thereby to his wife his will and desire as to the disposition that she
44 should make of the property, or that the property should be equally divided between their children. On the contrary, he declared to his wife, in the presence of his said daughter, Christiana Virginia, that if she survived him she was to do whatever she thought best with it, either by gifts in her lifetime, by will, or otherwise.

7th. They admit that their brother Leonidas died before their father; that their mother, Mary I. Campbell, survived their father, who died May 21st, 1881; that their mother made and published her last will and testament May 26th, 1882, by which (after some specific legacies) she devised and bequeathed all the residue of her estate to be equally divided between her two daughters and the children and descendants of her deceased son, and that she devised all of her real estate to her executors, to be sold and the proceeds disposed of as part of the residu*m* of her estate. They deny, however, that her will was made in conformity to any understanding and agreement had with their father or for the purpose of carrying out the terms and provisions of the will of their father.

8th. Of the matters and things alleged in the eight- paragraph of said bill these defendants have no personal knowledge.

9th. They admit that by the will of their father he bequeathed an annuity of five hundred dollars to his sister Eloise, and they are informed and believe that the executors under his will, Frederick L. Moore, Alexander W. Russell, and Jourdan W. Maury, set aside thirteen thousand dollars of the registered bonds of the United States, then already standing on the books of the U. S. Treasury in
45 his name, for the purpose of applying the interest thereon to the payment of said annuity. They also admit that the said Eloise survived their father, and that she died about seven years previous to the death of their mother. They also admit that the executors of the estate of their mother did not include these bonds in the inventory of her estate for the very good reason that said bonds did not at the time of the death of their mother form any part of her estate, she having several years before, to wit, October 6th, 1885, given them to these defendants, her daughters, and transferred and assigned them accordingly on said Treasury books, as will be more fully stated by them in their answer to the fourteenth and fifteenth paragraphs of said bill.

Whether said executors omitted afterwards to file in the probate court of said District a memorandum or copy of the transfer of said bonds by them to their mother these defendants do not know.

10th. They admit that at the time of the death of the said Eloise their mother was eighty-three years of age, and had since the death of her husband, as she and their father had frequently done before in his lifetime, been residing alternately with these defendants, her daughters, who were her only surviving children, their father, mother, and said Aunt Eloise all having died at the home of the defendant Christiana Virginia Moore.

They also admit that their mother was a lady of simple tastes and economical habits, and that her income was greatly in excess of her own immediate personal expenditures or needs, but they deny that a large or any portion of her income was given to
46 them or either of them by way of advances, and the only gifts that they recall as being received by them from their mother, except the bonds before referred to, were presents of $100 each, which she made them and the complainant Mary K. Campbell, the widow of her son Leonidas, every Christmas.

And these defendants, further answering, aver that the greater part of her income was devoted to helping the poor and contributing to charitable and benevolent objects and institutions of different kinds, in all of which she took great pleasure and interest.

11th. They are informed and believe that on October 5th, 1885, which was five days after the death of the annuitant, Eloise, the said Moore and Russell, as surviving executors of the will of their father, transferred and assigned to their mother, on the books of the Government, the said $13,000 of registered bonds, and they admit that she on the following day transferred and assigned $6,500 of said bonds to each of her daughters, these defendants. They have no knowledge of the market value of said bonds, but they were selling at a premium, and they believe that they were worth about $15,000.

12th. These defendants have no personal knowledge of the matters and things alleged in the twelfth paragraph of said bill.

13th. Supposing that the complainants refer to the $13,000 of registered U. S. bonds in the thirteenth paragraph of said bill, these defendants, while not admitting that these bonds were bequeathed equally to her two daughters and to the children of her
47 deceased son, under the provisions of their mother's will, aver that she well knew, as explained to her by her husband, that the making of her will would not at all prevent her from doing whatever she saw proper in her lifetime with any part of her estate, real or personal, between the date thereof and the time of her death.

And they deny, as charged, that there was an unseemly haste in the transfer of said bonds to their mother by the surviving executors of the will of their father five days after the death of the said life annuitant, Eloise. On the contrary, these defendants believe that it was the duty of said executors to make this transfer from the estate of their father to their mother as soon as practicable upon the death of said Eloise.

And from information and belief these defendants deny, as charged by innuendo, that said transfer was made in anticipation of the gifts made the next day by their mother to them of said bonds; which gifts were entirely unexpected by them, and they believe the surprise was equally great to their respective husbands.

14th. In answer to the fourteenth paragraph of this bill, these defendants say that the transfers of said bonds by their mother to them were made entirely voluntarily and of her own free will, and without any request or suggestion even in any way by them or either of them, nor from what their mother told them had either of their respective husbands suggested such an act. It was the free, unconditional, and unsolicited gift from a mother (then possessed of real and personal property worth nearly $100,000) who was most devotedly attached to her only surviving children and who was in return,
48 as she well knew, equally beloved by them. The gifts were made even more freely, as these defendants believe, than were the subsequent gifts of five hundred dollars each made by their mother in the summer of 1891 to the complainant Mary K. Campbell, the widow of her deceased son, Leonidas; as freely as were the gifts of one hundred dollars each by her made to the complainants Blanche, Edith, and Nannie, as well as to her granddaughter Mary, since deceased, the children of her said deceased son, upon their respective marriages; as freely and with as much pleasure as were the gifts of one hundred dollars each always made every Christmas to the said Mary K. Campbell and to these defendants; as freely as were the gifts of thousands of dollars made by their mother to numerous deserving poor persons and to all kinds of charitable and benevolent objects.

The father and mother of these defendants, as before stated, were most confidential to each other, and the reason assigned by their mother to them for wishing to give them these bonds was that she well knew that their father had in his lifetime given, advanced, and paid out to and on account of his son Leonidas, in excess of what he had given, advanced, and paid out to and on account of these defendants, his daughters, beyond the amount of the legacies to them in his will, sums in the aggregate fully equal to half the value of said bonds, and that she desired, as an act of justice to them, to thus equalize their shares.

But they deny that their mother ever, by word or act, regarded or treated these gifts as advancements to her daughters, and *pro tanto* an ademption of their distributive shares under the residuary clause of her will, and to be accounted for as such in the final settle-
49 ment of her estate; and they are advised that even if their mother had assigned no reason for these free and voluntary gifts to her daughters, such gifts so made could not legally be regarded or considered as advancements under her will to them, and *pro tanto* an ademption of their distributive shares under the residuary clause thereof.

15th. They deny, as stated by them in the preceding paragraph, that the said transfers were not the voluntary act of their mother. They deny that said gifts were the result of any undue or any other

kind of influence except that of a mother's love for her only children and, as she declared, an act of justice to them. They deny that there were any importunate and incessant or any other kind of demands, ever made by them or either of them, alone, or together, or aided and abetted by their respective husbands, on their mother for anything whatever, or that the relation of their respective husbands, as executors or otherwise, ever gave them any controlling or other undue influence whatever over her; and they deny, from their thorough knowledge of the character of their mother and of their respective husbands, that there was any violation by their husbands or either of them of the duties which their mother reposed in them as executors of her said will or otherwise howsoever, though they are informed that the provisions of their mother's will were known to the said executors thereof.

16th. They admit that the estate of their mother has not yet been finally settled, as there remains to be sold by said executors very valuable real estate, known as premises No. 610 "E" street
50 N. W., in this city, devised to said executors to be sold and the proceeds equally divided between these defendants and the children and descendants of their brother Leonidas.

These defendants, having fully answered, pray to be hence dismissed with their reasonable costs.

CHRISTIANA VIRGINIA MOORE.
JULIA A. RUSSELL.

CHAS. H. CRAGIN,
Sol'r for Def'ts.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

CHRISTIANA VIRGINIA MOORE.

Subscribed and sworn to before me this 23rd day of May, 1896.

JESSE W. RAWLINGS,
[SEAL.] *Notary Public, D. C.*

CITY AND COUNTY OF PHILADELPHIA, }
State of Pennsylvania. }

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

JULIA A. RUSSELL.

51 Subscribed and sworn to before me this 22nd day of May, 1896.

R. MEADE BACHE,
[SEAL.] *Notary Public.*

52 DEFENDANTS' EXHIBIT.

Filed May 26, 1896. J. R. Young, clerk.

#5703

No. —, Adm'n Doc. —.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

First and Final Account of Frederick L. Moore and Alexander W. Russell, Executors under the Last Will and Testament of Mary T. Campbell, Deceased, Due Notice Having Been Published in the Law Reporter and Evening Star.

These accountants charge themselves with the inventory filed on the 16th day of November, 1893, and recorded in Liber No. 25, L. P. W., Inventories and Sales, folio 476, consisting of the following stocks and notes and bonds at the appraised value:

1 note of Robert B. Tenney	1,000		1,000
1 certf. for 25 shares Columbia Fire Insurance Co.	312 50		312 50
2 " " 102 shares of the Pennsylvania R. R. Co.	5,100 00		5,100 00
5 certf. for 19 shares of the Farmers' — Mechanics' Nat'l Bank of Georgetown, D. C.	3,610 00		3,610 00
5 " Nat'l Bank of Republic for 26 shares	6,240 00		6,240 00
1 " Metropolitan R. Road Co. for 49 shares	2,840 00		2,840 00
1 " Union Fire Insurance Co. for 25 shares	350 00		350 00
2 " German American Fire Ins. Co. for 14 shares	1,960 00		1,960 00
3 " of Arlington Fire Ins. Co. for 30 shares	4,500 00		4,500 00
1 " Potomac Insurance Company of Georgetown for 53 shares	3,975 00		.....
Sold 10 shares for	.....		765 00
Appraised value of the 43 shares	.....		3,225 00
2 " Washington Gas Light Co. for 35 shares	1,680 00		.....
Sold 14 shares for	.....		668 50
Appraised value of the 21 shares	.....		1,008 00
1 bond, series A, for 100, of the Washington Gas Light Co. 6 % reg. bonds	116	sold for	113 75
Inventory.—Amounts carried forw'd.	31,683 50		$31,692 75
Amounts brought forw'd	31,683 50		$31,692 75
1 bond, No. 40, series B, for $500, registered imp't bond Gas Co.	585 00	sold for	578 75
1 certf. of indebtedness, No. 187, for $200			
1 " " " " 20 appraised at	275 00	" "	294 25
1 certf., No. 140, of the American Press Asso., appraised at	570 00	" "	630 00
1 note of Julia C. Russell for	250 00		250 00
1 old desk	8 00		8 00
1 " chair	2 00		2 00
Appraised value	$33,373 50		33,455 75

All stocks and bonds sold *was* upon order of the court.
And with inventory of money filed on the 23d day of November, 1894 ..... 2,923 68
This inventory supersedes the inventory filed No. 16th, 1893, and recorded L. P. W., Inventories and Sales, for..... 678 98

And with the following interest and dividends as follows, to wit:

1893.					
Nov.	3.	Dividends from Wash. Gas stock.....	17 50		
	3.	" Columbia Fire Ins. stock. ...	7 50		
	7.	" American Press Asso. "	3 00		
	10.	" Arlington Fire Ins. Co..	120 00		
	11.	Interest on note of 1,000, R. B. Tenney.	19 00		
	28.	Dividend Amer. Press Asso. stock.....	3 00		
Dec.	6.	" Penn. R. R. stock.....	127 50		
"	21.	" American Press Asso. stock...	3 00		
1894.					
Jan'y	9.	" Potomac Insurance Co.....	15 00		
1893.					
Dec.	21.	" Amer. Press Asso. stock	3 00		
1894.					
Jan'y	1.	Interest Wash. Gas Light bond.... ...	24 60		
Jan'y	21.	Dividend Amer. Press Asso.....	3 00		
Feb'y	21.	" " " "	3 00		
April	5.	" " " "	3 00		
					352 10
		Amount carried forward.....			$36,731 53

53

		Amount brought forward.....			$36,731 53
1894.		Dividends continued:			
April	5.	" on American Press Asso. stock	$3 00		
"	7.	" " " " " "	3 00		
"	7.	" " Wash. Gas Light Co.	7 00		
May	23.	" " American Press Asso. "	3 00		
July	2.	Interest Gas Wash. bonds.....	24 60		
June	26.	Dividends American Press Asso.....	3 00		
July	11.	" Potomac Ins. Co. stock.....	15 00		
"	25.	" American Press Asso. stock..	3 00		
Aug.	1.	Int. Wash. Gas Light " ..	14 00		
"	26.	Dividends American Press " " ..	3 00		
Sept.	11.	" " " " " ..	3 00		
"	25.	" " " " " ..	3 00		
"	24.	" " " " " ..	3 00		
					87 60
					$36,819 13

And they claim credit and allowance for the following, to wit:

1893.							
August	11.	By paid J. F. Birch and Sons, undertaker-. ....Vou.	1..	.....			228 00
Nov.	16.	" " register of wills, court costs... "	2..	.....			32 08
Aug.	12.	" " Mary C. Carlisle, nurse.. ... "	24	.....			14 00
"	14.	" " V. C. Moore, board... ..... "	3..	.....			10 40
Oct.	4.	" " Arlington Fire Ins. Co..... "	4..	.....			31 00
"	31.	" " S. S. Shedd Bros., repairs.... "	5..	.....			7 30
Nov.	2.	" " Dr. Armistead Peter, profs. services ..... "	6..	.....			14 00
Aug.	14.	" " F. L. Moore, sundries..... "	7..	.....			9 50
Nov.	15.	" " Levy and Thompson, apprais-ers..... "	8..	.....			12 00
June	30.	" " D. C. taxes .... "	9..	.....			213 30

Nov.	28.	By paid Chas. Irwin, reg. of wills, Phila	Vou.	10..	.....		2 00
Dec.	9.	" " C. W. O'Neil, Congressional cemetery	"	11..	.....		5 00
"	19.	" " the Law Reporter Co., notice creditors	"	12..	.....		5 00
"	26.	" " Washington Monumental Co.	"	13..	.....		70 00
1894.							
May	29.	" " D. C. taxes	"	14..	.....		213 30
July	19.	" " American Trust Co., safe rent.	"	15..	.....		2 50
Nov.	1.	" " Samuel Artz, plumbing	"	16..	.....		4 25
Oct.	1.	" " Arlington Fire Ins.	"	17..	.....		22 50
Nov.	16.	" " the Law Reporter Co., final notice	"	18..	.....		11 00
Nov.	21.	" " S. S. Shedd, repairs	"	19..	.....		7 50
			"	20..	.....		16 75
		Amounts carried forward				$36,819 13	$931 38
1894.		Amounts brought forw'd				$36,819 13	931 38
Nov.	19.	By paid Evening Star, final notice	Vou.	21..	.....		9 90
"	22.	" " register of wills, this %	"	22..	.....		38 62
		" commission on 36,819.13 @ 6 %			.....		2,209 14
		Balance			.....		3,189 04
							33,630 09
						36,819 13	36,819 13
		Balance down				33,630 09	

Distributable under the provisions of the will as follows, to wit:

To First Presbyterian Church of Washington, D. C.	Vou.	23..	.....		500 00
" First Presbyterian Church	"	24..	.....		1,000 00
" Aged Women's Home, Georgetown, D. C.	"	25..	.....		100 00
" Women's Christian Asso., District Columbia	"	26..	.....		1,000 00
" Trustees of the Presbyterian Congregation of Georgetown for Sunday school	"	27..	.....		100 00
Residue			.....		2,700 00
					30,930 09
				$33,630 09	$33,630 09
Residue down				$30,930 09	

Distributable under the provisions of the will:

To Julia C. Russell, daughter, ⅓ of residue:			
By paid her on %, vous. 28 to 30	$10,271 00		
Cash to be paid	39 03		
		.....	10,310 03
To Virginia C. Moore, daughter, ⅓ of residue:			
By paid her on %, vous. 31 to 33	10,251 50		
Cash to be paid	58 53		
		.....	10,310 03

The balance, $\frac{1}{3}$, distributable among the grandchildren, and children of a deceased grandchild share equally, 10,310.03:			
To William H. Campbell, grandson, $\frac{1}{7}$ of 10,310.03 to his committee, Mary K. Campbell:			
By paid him on %, vou. 34 & 35	1,464 50		
Cash due him	8 26		
		.....	1,472 86
To John C. K. Campbell, grandson, $\frac{1}{7}$:			
By paid him on %, vou. 36 & 37	1,464 50		
Cash due him	8 36		
		.....	1,472 86
Amounts carried forward		$30,930 09	$23,565 78
54 Amounts brought forw'd		30,930 09	23,565 78
To Nannie C. Towson, grandchild, $\frac{1}{7}$ of $\frac{1}{3}$, 10,310.03:			
By paid her on %, vous. 38 and 39	$1,464 50		
Cash due her	8 36		
	1,472 86	.....	1,472 86
To Edith Graham, grandchild, $\frac{1}{7}$ of $\frac{1}{3}$:			
By paid her on %, vous. 39 & 40	1,464 50		
Cash due her	8 36		
		.....	1,472 86
" Blanch Towson, grandchild, $\frac{1}{7}$ of $\frac{1}{3}$:			
By paid her on %, vous. 41 & 42	1,464 50		
Cash due her	8 36		
		.....	1,472 86
" Mary K. Campbell, guardian, to $\frac{1}{7}$ of $\frac{1}{3}$, Mary L. T. Campbell, grandchild:			
By paid her on %, vous. 43 & 44	1,464 50		
Cash due	8 36		
	1,472 86	.....	1,472 86
To Henry D. Fry, guardian to Edith and Gertrude Fry, children of deceased, grandchild and great-grandchildren of Mary T. Campbell, deceased, $\frac{1}{7}$ of $\frac{1}{3}$:			
By paid guardian on %, vous. 45 & 46	1,464 50		
Cash due	8 36		
	1,472 86	.....	1,472 86
Fractions		.....	01
		30,930 09	30,930 09

A. W. RUSSELL,
F. L. MOORE,
Executors.

55 DISTRICT OF COLUMBIA, *To wit:*

OFFICE OF THE REGISTER OF WILLS, *Nov. 23rd*, 1894.

This day appeared Frederick L. Moore and Alexander W. Russell, executors of Mary I. Campbell, deceased, as aforesaid, and made oath on the Holy Evangels of Almighty God that the foregoing account as stated is just and true; that they have *bona fide* paid or secured to be paid the several sums for which they claim credit and allowance.

Test:

[SEAL.]

M. J. GRIFFITH,
Notary Public for the District of Columbia.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

On this 23rd day of November, A. D. 1894, the foregoing account, being now presented for approval, the same *us*, after examination by the court, approved and passed.

A. B. HAGNER, *Justice.*

56 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

OFFICE OF THE REGISTER OF WILLS.

I hereby certify that the aforegoing is a true copy of the original, first, and final account of Frederick L. Moore and Alexander W. Russell, executors of the last will and testament of Mary I. Campbell, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

Witness my hand and seal of the supreme court of the
[SEAL.] District of Columbia, special term for orphans' court business, this 24th day of November, A. D. 1894.

L. P. WRIGHT,
Register of Wills, District of Columbia.

57 DEFENDANTS'

Filed May 26, 1896.

578.

DR. F. L. Moore, A. W. Russell, and Jourdan W. Maury,

1881.			
May 28.	For 25 shares Washington Gas Light stock, par value		$500 00
(Redeemed in)*	" 4 bonds Philadelphia, Wilmington & Balto. R. R., ea. $1,000		4,000 00
	" 100 shares Pennsylvania R. R. Co., $50		5,000 00
	" 1 note of F. L. Moore		2,000 00
	1 do. do.		1,000 00
	1 do. do.		2,000 00
	7 U. S. bonds, 5 p'r cent., ea. $1,000 (sold)*		7,000 00
	U. S. do. 4½ "		5,000 00
	U. S. do. 4 "		8,000 00
	38 shares Potomac Ins. Co., 25		950 00
	40 " Metropolitan R. R., cost		1,035 00
	12 " Arlington Ins. Co.; par value, $100		1,200 00
	3.65 D. C. registered bonds (sold)*		3,000 00
	Bills receivable (in Bank of Republic for col.)		5,771 09
	Cash in Bank of Washington		144 85
	" " B'nk of Republic		838 23
June 1.	" interest on U. S. 4½		56 25
" 2.	" premium on $7,000 U. S. 5 p'r ct. bonds—		
" "	" sold to Riggs & Co. at 101		70 00
" "	" premium on $1,000 3.65 D. C. bonds—		
" "	" sold to Riggs & Co. @ 107¾		77 50
" 4.	Dividend Pennsylvania R. R		200 00
" "	" Sale of allotment 13 shares Penna. R. R.		208 00
" "	Cash from John T. Kelly's note		979 48
			49,030 40
	Balance due to credit of executors		50
			49,030 90

[* In pencil in copy.]

EXHIBIT.

J. R. Young, clerk.

executors, in % with estate W. H. Campbell. CR.

1881.					
May	28.	By notes of F. L. Moore paid to C. V. Moore	(No. 1)*		$3,000 00
"	"	" cash paid Rev. S. H. Howe, D. D.	(2)*		100 00
"	"	" " " Mrs. Mary I. Campbell	(3)*		150 00
"	30.	" " Joseph F. Burch, undertaker	(4)*		253 75
"	"	" " W. L. Dunlop, attorney	(5)*		15 00
"	"	" " Dr. Armistead Peter	(6)*		21 00
"	31.	" " Miss Elouise S. Campbell	(7)*		125 00
"	"	" " Mary I. Campbell	(8)*		60 00
June	2.	" " Juliana C. Russell	(9)*		5,000 00
"	"	" " executors in full of commission	(10)*		1,000 00
"	"	" " C. Virginia Moore	(11)*		2,000 00
"	"	" " F. L. Moore for sundry bills paid by him	(12)*		65 92
"	4.	" expense of executors to Philadelphia	(13)*		20 25
"	7.	" fees to register of wills, Philadelphia	(13)*		2 50
	9.	" Mary I. Campbell, dep. Bank of Washington	(14)*		385 25
	10.	" copy of will, 4.75; postage to Phila., &c., .25	(15)*		5 00
	14.	" Wm. C. Russell	(16)*		12 00
	25.	" rent Met. Safe. Dep. vault	(17)*		20 00
	27.	" Mary I. Campbell, deposited Bank of Wash			69 16
	28.	" Mary I. Campbell, draft for Eloise S. Campbell			100 00
	"	" Sundries to Mary I. Campbell	(18)*		23,626 07
		by U. S. bonds retained to pay annuity to Eloise S. Campbell			13,000 00
					$49,030 90

[* In pencil in copy.]

Vouchers filed herewith for all disbursements. 5.69. P'd.

Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, *To wit:*

OFFICE OF THE REGISTER OF WILLS.

I hereby certify that the aforegoing is a true copy from the original account of F. L. Moore, A. W. Russell, and Jourdan W. Maury, executors of William H. Campbell, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

Witness my hand and the seal of the supreme court of
[SEAL.] the District of Columbia, special term for orphans' court business, this 18th day of August, A. D. 1883.

H. J. RAMSDELL,
Register of Wills, D. C.

DISTRICT OF COLUMBIA, *To wit:*

OFFICE OF THE REGISTER OF WILLS, *July 2nd*, 1881.

This day appeared F. L. Moore, one of the executors of Wm. H. Campbell, deceased, as aforesaid, and made oath on the Holy Evangels of Almighty God that the foregoing account as stated is just and true; that they have *bona fide* paid or secured to be paid the several sums for which they claim credit and allowance.

Test: A. WEBSTER,
Register of Wills, D. C.

58 DEFENDANTS' EXHIBIT.

Filed May 26, 1896.

TREASURY DEPARTMENT, OFFICE OF THE REGISTER,
WASHINGTON, D. C., *April* 2, 1896.

Hon. Nota McGill, register of wills.

SIR: At the request of Messrs. F. L. Moore and A. W. Russell, executors of the will of William H. Campbell, I hereby certify that on the 5th day of October, 1885, they, as said executors, assigned to Mary I. Campbell $5,000 4½% and $8,000 4% U. S. registered bonds (in all, $13,000); that said bonds were duly transferred to said Mary I. Campbell and by her afterwards assigned to other parties.

JNO. B. BRAWLEY,
Acting Register.

59 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of WILLIAM H. CAMPBELL, Deceased. No. 578.

DISTRICT OF COLUMBIA, *ss:*

Frederick L. Moore and Alexander W. Russell, being duly sworn, depose and say as follows:

We are the surviving executors of the estate of said William H. Campbell. Miss Eloise S. Campbell, the annuitant provided for by

the will of our said testator, died on or about the month of September, 1885, and, the annuity to her thus having ceased, we assigned, transferred, and delivered, on the 5th day of October, 1885, to Mrs. Mary I. Campbell, widow and residuary legatee of said testator, the United States registered bonds to the amount of thirteen thousand dollars ($13,000) theretofore reserved by us from which to pay said annuity, as will more fully appear by reference to the letter of the acting Register of the Treasury, hereto attached. We did not take a receipt for said bonds from Mrs. Campbell, and she died in August, 1893.

We therefore pray that this affidavit and said letter may be accepted in lieu of such receipt, and that our final account as executors may stand approved with this as our vouchers for the transfer of said bonds.

F. L. MOORE.
A. W. RUSSELL.

Subscribed and sworn — before me this 3d day of April, 1896.

M. J. GRIFFITH,
[SEAL.] *Notary Public.*

60 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the foregoing is a true copy of the certificate of transfer and assignment of bonds in the matter of the estate of William H. Campbell, deceased, and also of the sworn statement of executors thereto attached, filed April 3rd, 1896, and recorded in the office of the register of wills for the District of Columbia aforesaid.

In testimony whereof I hereunto subscribe my name
[SEAL.] and affix the seal of the said supreme court, special term for orphans' court business, this 25th day of May, A. D. 1896.

J. NOTA McGILL.

61 *Replication.*

Filed June 9, 1896.

In the Supreme Court of the District of Columbia, Holding a Court in Equity.

BLANCHE K. TOWSON and Others
vs.
CHRISTIANA F. MOORE and Others. } Equity. No. 17306.

The complainants hereby join issue with the defendants.

CHRISTIANA V. MOORE,
JULIA A. RUSSELL,
FREDERICK L. MOORE,
ALEXANDER W. RUSSELL,
The Plaintiffs,

By their solicitor, H. O. CLAUGHTON.

62 *Testimony for Plaintiff.*

Filed January 12, 1897.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.* }
vs. } In Equity. No. 17306.
FREDERICK L. MOORE *et al.* }

SATURDAY, *Oct.* 24, 1896—12 O'c.

Met, pursuant to agreement and consent of counsel, at the office of H. O. Claughton, Esq.

Present: Mr. Claughton, on behalf of the complainants, and Mr. Charles H. Cragin, on behalf of the defendants Moore & Russell.

Mary D. Bradley.

MARY D. BRADLEY, a witness on behalf of the complainants, of lawful age, being duly sworn by the examiner, deposed as follows:

By Mr. CLAUGHTON:

Q. State your name in full and your residence.

A. Mary Duncan Bradley, 1688 31st street, Georgetown.

Q. Did you know Mrs. Mary Campbell during her lifetime?

A. Yes, sir.

Q. During what years, if you can tell, did you know her?

A. I do not know exactly. My first acquaintance with her was in—I do not remember.

Q. Just approximate.

A. 1880. I do not really scarcely remember the years when I knew her. I think it was in 1880.

Q. And from what time?

A. It might have been before that time.

63 Q. And up to what time?

A. Up to the time of her death.

Q. What was the nature of your acquaintance with her, whether intimate or not?

A. No; I was very intimate with her. I knew her very well. I scarcely call it intimate. I knew her quite well.

Q. Were you upon visiting terms with her?

A. Yes.

Q. You think that those terms began somewhere about 1879 or 1880?

A. I think so. I have a very indistinct recollection of it. I am a very poor hand at remembering dates.

Q. Did you see her most frequently in the early part of your acquaintance with her or towards the latter part of it?

A. Well, I do not know. I think it was about the same.

Q. Will you state whether or not during this acquaintance or at

any time of it you observed any weakness of mental powers on the part of Mrs. Campbell?

By Mr. CRAGIN: I object to that question because it is not alleged in the bill that there was any weakness in her mental capacity.

A. No; I did not see any at all; not until the last month or two before her death I noticed that she was a little feeble. I could scarcely call it weakness. I do not think she had her usual vigor of mind, but her mind was clear.

Q. Do you remember whether or not she expressed to you at any time the relations existing between herself and Mrs. Moore?

A. No.

64 Q. Did she at any time make any communications to you with respect to the disposition of her property?

A. Never.

Q. Did she at any time inform you of the fact that any one importuned her for a gift of any portion of her property?

A. No.

Q. Did she at any time complain to you in any way about the treatment she had received?

A. No.

Q. Now, did any one ever say to you that Mrs. Campbell had made complaints?

By Mr. CRAGIN: Objection noted as to "any one."

A. Complaints of what?

Q. Of Mrs. Moore.

A. No.

Q. Was there anything at any time in conversation between you and any one tending in that direction?

A. No; I do not recollect.

Mr. Cragin says that he desires to make no cross-examination.

MARY D. BRADLEY.

Subscribed by the examiner, with the consent of counsel, the witness having been sworn before giving her testimony to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery, Room 92, Fendall Building.

65 LAURA ELLEN BAKER, a witness on behalf of the complainant, of lawful age, being duly sworn by the examiner, testified as follows:

By Mr. CLAUGHTON:

Q. What is your name and address?

A. Laura Ellen Baker, 1932 15th street N. W.

Q. Do you know the parties to this suit, Mrs. Baker?

A. I do.

Q. Did you know Leonidas Campbell in his lifetime?

A. Yes, sir.

Q. William H. Campbell?
A. Yes, sir.
Q. And his wife, Mrs. Mary Campbell?
A. Yes, sir.
Q. State what were the terms of your intimacy with Mrs. Mary Campbell after the death of her husband.
A. Well, I went to see her—not very often, because it was not convenient. I was not living in the city; I lived near Bladensburg. Sometimes she used to write to me to come to see her.
Q. State during what years after the death of Mr. Campbell, the elder Campbell, you were in the habit of paying visits to his widow, Mrs. Mary Campbell.
A. I do not remember.
Q. What years?
A. I could not give any years. I do not remember. I could not be exact.
Q. You do not remember what year she died?
A. I do not know exactly, sir.
66 Q. Did you visit her for one, or two, or three years previous to her death?
A. Oh, yes, sir.
Q. State how frequently during those visits you did see her.
A. Well, it might have been three months, or it might have been two, or it might have been four. I saw her two, or three, or four times a year.
Q. How long had you known Mrs. Campbell?
A. Over thirty years.
Q. What was the character of your relations to her as friends?
A. She was very fond of me and I of her.
Q. What was the degree of intimacy existing between you in your communications to each other? Were you intimate or not?
A. Yes, sir; I think I was quite. I saw her very often when she lived in the city here on E street.
Q. Have you any recollection of any conversation at any one of these visits to Mrs. Campbell by you in which she spoke of the relations existing between Mrs. Moore and Mr. Moore and herself?
A. Yes, sir.
Q. Can you give me the probable date of that?
A. You mean the year?
Q. Yes.
A. No, sir; because I was not——
Q. Can you tell how long it was before her death?
A. It was some time before her death.
Q. What do you mean by some time—some months or some years?
A. Some months.
Q. Was not as much as a year?
67 A. Oh, no, sir.
Q. Where did you see her—in what part of the house—on that occasion?
A. I saw her up under the mansard roof.

Q. Was that her room?

A. Yes, sir.

Q. Then, state in your own way what Mrs. Campbell said to you upon that occasion?

A. She told me that Mrs. Moore and Mrs. Russell had made her promise that if she was to outlive Miss Ellouise Campbell that she would divide $12,000 between them equally—if she outlived Miss Ellouise Campbell—and that they worried her so, to get rid of them she promised them.

By Mr. CRAGIN: This is objected to. This is a conversation alleged to have taken place between the decedent and the witness, and not in the presence of either Mrs. Russell or Mrs. Moore, the the defendants.

Q. If she said anything more on that subject, please state all she said.

A. She told me that Mr. Moore did not like her, Mrs. Moore did not like her; that she was living too long; that she was in their way. She told me she was afraid of Mr. Moore.

Q. After you left the room of Mrs. Campbell, did you see any one else in the house?

A. Yes, sir; saw Mrs. Moore.

Q. Did any conversation take place between Mrs. Moore and yourself at that time?

A. Yes, sir.

Q. State what it was.

68 A. Mrs. Moore told me that was her way; had she said anything against them to me; if she has, not to think anything of it; that she was in her dotage; that she went around the neighborhood talking to the neighbors against them.

Q. Did she name any one—any particular neighbor?

A. One Mrs. Bradley.

Q. Is that the Mrs. Bradley who was just here?

A. I do not know, sir; I never saw her.

Q. She named a Mrs. Bradley who Mrs. Moore said was the neighbor?

A. Yes, sir.

Q. Go on and state anything more that she said.

A. Well, she told me afterwards that she had divided this money between Mrs. Moore and Mrs. Russel equally.

Q. Was this in the presence of Mr. Moore or Mrs. Moore?

A. No, sir; I was alone.

By Mr. CRAGIN: All this testimony which has taken place when Mr. Moore and Mrs. Moore were not present is objected to.

The WITNESS: After she told me she had divided this money equally she wanted the rest of her money to go to her grandchildren.

Q. Did you have any conversation with Mrs. Campbell upon this subject after the death of Miss Ellouise Campbell?

A. Yes; after her death she told me that she divided it equally between Mrs. Moore and Mrs. Russell—$12,000, she told me, which

she supposed her husband had laid aside for the support of Miss Ellouise.

Q. And there was something else she said, or did she say anything with respect to her wishes in regard to the rest of her property?

69 A. No, sir; except what I have told you. She wished the balance—she did not say property, she said money—to be divided among her grandchildren.

By Mr. CRAGIN: All this conversation is subject to objection.

Q. Now, is there anything pertinent to this controversy that you know of as coming from Mrs. Campbell, Senior—is there anything else that she said to you?

A. No, sir. I think I have said everything. There is one thing I remember now: The last time she had a conversation with me she told me to sit close to her—she was very deaf—told me to listen to her and not reply; that there was always somebody listening at the door. She told me that she was not under obligations to the Moores, for she paid them ample board for her maid and herself.

Cross-examination.

By Mr. CRAGIN:

Q. Mrs. Baker, did Mrs. Campbell assist you much financially?

A. Not a great deal, sir.

Q. How much do you suppose she contributed to you?

A. I could not tell, sir; I did not make a note of it.

Q. Give me some idea of how much—put in on an average?

A. Did not give me any set sum a year.

Q. No; I was not saying any stated sum, but just about how much money she gave you.

A. No, sir; I do not remember.

70 Q. She was a lady who gave away a great deal of money to different charitable objects?

A. I do not know anything about that.

Q. She gave you money?

A. Sometimes.

Q. Do you remember any sum that she gave you?

A. One Christmas, sir, she gave me forty dollars for a Christmas gift.

Q. Didn't she give you money every year?

A. Not all the time—sometimes.

Q. Was there a year passed that you did not get money from her?

A. Yes, sir; there was.

Q. How often?

A. I do not remember.

Q. She gave you several hundred dollars?

A. No, sir; she did not give me several hundred dollars.

Q. When did this alleged conversation take place that you have spoken of here?

A. Before she went to Philadelphia to live the last time.

Q. I want you to fix the year, as near as you can.

A. I do not remember any years.

Q. She told you in that conversation that Mr. and Mrs. Moore had both tried to get her to divide this $12,009 or bonds up between them?

A. I did not say Mr. Moore, sir. I said Mrs. Moore and Mrs. Russell. I did not mention Mr. Moore's name. I did not say bonds, either. I said money—$12,000. She never told me anything about bonds.

71 Q. Can't you by some circumstances fix—give us some idea of the year when this conversation took place?

A. No, sir. I do not remember the year. It was before she went to Philadelphia the last time.

Q. Was it in 1880 or 1890?

A. I would not like to say, sir, because I do not remember.

Q. Do you know when Mr. Campbell died?

A. What year?

Q. Yes.

A. I do not; no, sir.

Q. Well, in connection with this alleged conversation, was it anywheres about the time of his death?

A. It was some time after his death.

Q. He died May 21, 1881. Could not you from that date form some idea as to when this conversation took place?

A. I do not know what year, sir.

Q. But she did not, then, as a matter of fact, mention Mr. Moore's name?

A. In speaking of the division of this money?

Q. Yes.

A. No, sir; it was Mrs. Moore and Mrs. Russell.

Q. What had Mr. Moore done?

A. I do not know what he done. She did not tell me.

Q. You spoke of him in connection with this conversation, too?

A. She said that Mr. Moore was not kind to her and Mrs. Moore was not kind—thought she was living too long; that she was afraid of Mr. Moore, and I did not ask her any questions. She told me not to ask her any questions.

Q. Was she rather deaf?

72 A. Yes, sir.

Q. You think you visited her two or three or four times a year?

A. I think I did.

Q. Was there anything unpleasant said at any of the other visits about Mr. and Mrs. Moore and Mrs. Russell?

A. Only on this one occasion, sir.

Q. Did she state in what way they had been unkind to her?

A. No, sir.

Q. I understand you to say she did not say anything about those bonds?

A. She did not mention bonds. She said money.

Q. Did you ever hear that there was anything unpleasant between these people previous to this suit, in reference to the bequest of $5,000 under the husband's will? Did she ever refer to that?

A. No, sir.

Q. Never did?

A. Never heard of that; no, sir.

Q. But you did state here that you thought this conversation was some months before her death?

A. It was just before she went to Philadelphia to live.

Q. This conversation took place some few months before her death, did it not?

A. I remember it was just before she went to Philadelphia to live. Yes, sir; it was a few months before her death.

Q. You spoke of her having a room under the mansard roof, in the third story?

73 A. Yes, sir; she preferred that room, I suppose.

Q. Did she say to you that she preferred it?

A. Yes, sir; she preferred being up there. She told me it was a very nice room.

Q. You are on very intimate terms with the complainants here, are you not?

A. Yes, sir.

Q. Intimate friends of theirs?

A. Yes, sir.

Q. They have been very kind to you in your troubles?

A. Always kind to me.

Redirect.

By Mr. CLAUGHTON:

Q. I wish you would be a little more definite with respect to the time of this conversation. You say it was a few months before her death, and you also say it was just before she went the last time to Philadelphia.

A. Well, I cannot remember any dates.

Q. Was it before she went to Philadelphia?

A. Yes, sir; before she went to Philadelphia. There is one thing I wish to say. She said she would be happier in Philadelphia than she was here.

Q. Do you know when Miss Ellouise died—what year she died in?

A. I think it was in 1885.

Q. How long after the death of Miss Ellouise did this conversation take place about the division of the money?

A. Well, as well as I can remember, it might have been a month or it might have been six weeks.

Q. Short time after?

74 A. Yes, sir; a short time afterwards.

Recross-examination:

Q. Just now I understood you to say that it was just a few months before she died.

A. Before Mrs. Campbell died; no; I told you, sir, I could not remember.

Q. You know what year she died?

A. I could not remember.

Q. You know she died in the nineties?

A. Yes, sir.

Q. You say this conversation took place a few months before her death?

A. It took place a few months before she went to Philadelphia.

Q. And you also said it took place a few months before she died.

A. Well, as well as I can remember.

On October 31, 1896, Laura Ellen Baker, before signing her testimony, made the following corrections:

By the EXAMINER: Do you wish to make any corrections in your testimony?

A. I do. I wish to correct my testimony in respect to the times of my conversations with Mrs. Mary I. Campbell testified to by me in my examination. Mrs. Mary I. Campbell told me before the death of Miss Ellouise that Mrs. Moore and Mrs. Russell made her promise that if she outlived Miss Ellouise she would divide equally between them the $12,000 in money. That was before Miss Elouise'-
death. Then afterwards I went to see her, after Miss Elouise'-
75 death, a month or six weeks, I think, and she told me that she had divided the $12,000 equally between Mrs. Moore and Mrs. Russell. That was after Miss Elouise'- death. Then just before she went to Philadelphia she told me of the unkind treatment of Mrs. Moore and Mr. Moore.

By Mr. CRAGIN: I object to the competency of this witness to testify, and also because she is stating matters not covered by the previous examination.

By Mr. CRAGIN:

Q. Where did you see Mrs. Campbell at the time you state you called upon her after the death of Miss Elouise?

A. As I said the other day, in the room under the mansard roof of Mrs. Moore's residence.

Q. Whenever you saw her it was in the room under the mansard roof?

A. Yes, sir.

By Judge CLAUGHTON:

Q. Where did you see her after she came from Philadelphia?

A. I do not remember that I saw her there after she came from Philadelphia. I mean she was there before she went to Philadelphia.

Q. State where you saw her after she came from Philadelphia?
A. After she came from Philadelphia it was in the second story. I saw her only once after she came from Philadelphia.

LAURA ELLEN BAKER.

76 Subscribed by the examiner with the consent of counsel on both sides, the witness having been first duly sworn before giving her testimony to tell the truth, the whole truth, and nothing but the truth.

R. T. DOWNING,
Examiner in Chancery.

Mary Kennedy Campbell.

MARY KENNEDY CAMPBELL, a witness on behalf of the complainant-, of lawful age, being duly sworn by the examiner, deposed as follows:

(Mr. Cragin, counsel for the defendants, objects to her testifying, as she is a party to this suit as complainant, as to any statement by or transaction with the deceased, Mrs. Mary I. Campbell.)

By Judge CLAUGHTON:

Q. State your residence.
A. 1302 Rhode Island avenue N. W.
Q. Will you state what relation you bear to the family of William H. Campbell, deceased?
A. You mean relation?
Q. State whether you are connected with the Campbell family in any way?
A. I am the daughter-in-law of Mrs. Campbell.
Q. And the widow of whom?
A. Leonidas C. Campbell.
Q. What relation was he to Mrs. Russell and Mrs. Moore?
A. Was a brother.
77 Q. Did you know the senior Campbell—William H. Campbell?
A. Well.
Q. Do you know when he died?
A. Mr. William H. Campbell died, I think, May 21, 1881.
Q. Were you present at the family gathering at the time his will was read?
A. I was.
Q. Whom did you meet there?
A. Mrs. Russell, her daughter, his daughter, and her children, her husband, Mr. Moore, Mrs. Moore, and her children, and a majority of my children.
Q. After the reading of that will did you have a conversation with any one of those parties whom you have named?
A. I did.

Q. With which of them?
A. Mr. Moore.
Q. Where was that conversation held?
A. He took me in the back room on the second floor. There it was held, on the second floor.
Q. State what the conversation was.
A. He said to me, Mary, Mr. Campbell's will is a just will. I said, If it is carried out. He said, It will be carried out to the very letter. Mr. Campbell, he said, was a just man and Mrs. Campbell is a just woman. You stated that to Mrs. Campbell. You consider her just. Mr. Moore then went with me to Mrs. Campbell's room. She was alone. He said to her, Molly says this is a just will, and she said, I am very glad that she thinks so. She said I am very glad to hear you think it is just. Pa and I tried to do what
78 is right. Mr. Moore said, Molly says this is a just will.
Q. What did Mrs. Campbell say?
A. I am glad she thinks it is just. Pa and I thought it was right.

(All this testimony is objected to by Mr. Cragin.)

Q. Did you ever have any conversation with the older Mrs. Campbell with respect to the division of these bonds?

(Mr. Cragin desires to have the examiner note that this entire course of examination is objected to.)

A. No, sir; I never had any conversation.
Q. Did you ever hear from anybody that Mrs. Campbell had said anything about the division of the bonds and the circumstances under which the money had been given, as she called it?
A. I heard from Mrs. Baker, what Mrs. Baker has just said.

By Mr. CRAGIN: Question and answer objected to.

Q. What did Mrs. Baker state?
A. She told me that she had given these $6,000 to each daughter to make them equal; that is not right. She said she gave that $6,000 to each daughter because of the importunity, and she made them a promise before Ellouise'- death that if she survived Miss Ellouise that she would do it.

Cross-examination.

By Mr. CRAGIN:

Q. When Mrs. Baker first told you about the importuning of Mrs Campbell by Mrs. Russell and Mrs. Moore, did you at once go to Mrs. Campbell and tell her what you had heard?
79 A. I did not say a word to her about it.
Q. You know the fact that Mrs. Campbell died at Mrs. Moore's house?
A. Yes.
Q. Miss Ellouise, his (Mr. Campbell's) sister, also died there?
A. Yes.

Q. Did you receive from Mrs. Campbell any gifts in the last few years of her life?

A. I did.

Q. About how much?

A. One thousand dollars, in two installments of $500 each.

Q. Besides that, you received every Christmas a sum of money?

A. Christmas she gave $100 to myself and my children.

Q. Do you know her character as a free giver to charitable objects and benevolent objects and assisting poor people?

A. I never heard of her being very charitable before her husband's death.

Q. After her husband's death?

A. After her husband's death? Except to me; I presume that may be considered charity.

Q. I simply wanted to show by you that she was a woman that gave largely to the poor and charitable objects.

A. That you cannot prove by me, because I do not know. She gave me that $1,000, and I heard that her daughter said that she gave that as any other charity. I do not know to whom she gave her money.

80 Q. Did you have anything unpleasant with Mrs. Campbell and Mrs. Moore and Mrs. Russell as a result of that bequest of $5,000 in the will of your father-in-law?

A. Not that I know of.

Q. Nothing unpleasant accrued out of the fact?

A. Allow me to explain. Mr. Moore told me that will was just. I agreed it was just then; that in fact the five thousand dollars each that he had given to them was nothing more than just; to which I agreed. I then went to see my stepmother. I told her all that had taken place in the house. I told her that I thought the will was just. She said, "Just! Where does it come in, the justice? He has left this money to his wife. She can do as she pleases. It was left to her."

Q. My question was, Was there not something unpleasant in your family relations growing out of this bequest of $5,000 each made by your father-in-law to Mrs. Russell and Mrs. Moore?

A. I do not regard it in that way. I told you just what Mrs. Kennedy told me, that if it was left in this way she did not consider it just, because the daughters might influence their mother. I then went to Mr. Moore and told him I did not think it was just. Then unpleasantness grew from that. I made no objection to his giving them each $5,000. The unpleasantness came because I took back what I said. I just agreed to what he told me to say, "That the will was just," and then I said, according to my own views, that it was unjust, which caused the fuss.

Q. As the result of that fuss, what took place between you and Mrs. Campbell?

A. For some time she resented it.

Q. Did you apologize afterwards for having done that—

81 say you were sorry for having made any unpleasantness in the family?

A. No, sir.

Q. You did not say anything like that or write it?

A. I did not write. Mrs. Admiral Russell made a statement about that.

Q. I do not care anything about what other people said. I am just getting down to what you said.

A. Mrs. Russell made that statement, and then the unpleasantness ensued. When Mrs. Russell went to California she remembered distinctly the conversation which took place between me and her about Mr. Campbell's will. She wrote a letter to my stepmother and exonerated me. She took the blame upon herself.

Q. Mrs. Russell?

A. Mrs. Admiral Russell. Mrs. Admiral Russell was principally the cause of this trouble. She gave me to understand that the $5,000 he left to his two daughters did not cause the trouble.

Q. There was not anything unpleasant growing out of that, as far as you and Mrs. Campbell were concerned?

A. I did not consider it with reference to that $5,000 each.

Q. Did you not just state, Mrs. Campbell, that it did make unpleasantness between you and Mrs. Campbell?

A. My saying it was unjust after I said it was just; then the trouble ensued.

Q. That gave rise to unpleasantness between you and Mrs. Campbell?

A. Yes, sir.

82 Q. Do you care to state what Mrs. Campbell said to you in relation to that?

A. Mrs. Campbell and I had no conversation in reference to that. She showed by her manner that she was angry because I criticised her husband's act.

Q. That is all she said to you about it?

A. Never made any immediate reference to the subject to me. Mrs. Russell wrote this letter exonerating me for what I had said; then Mrs. Campbell was kind and pleasant and continued so in relation to me. If I had not had that letter, I do not suppose there ever would have been a kind feeling.

Q. I did not hear that.

A. If Mrs. Russell had not written that letter to my mother-in-law exonerating me, I do not think she would ever have been kind to me.

Redirect.

By Mr. CLAUGHTON:

Q. Mr. Cragin asked you where Mrs. Campbell and Miss Ellouise Campbell died, and you responded, At the house of her daughter, Mrs. Moore.

A. Yes, sir.

Q. Now, Mrs. Campbell, do you know whether or not Mrs. Campbell had expressed a desire to die at some other house?

A. No. She told me, before she went to Philadelphia, she would like to be buried from my house.

Q. Mr. Cragin asked you whether or not there had not been some trouble between you and Mrs. Campbell and you and Mrs. Russell because old Mr. Campbell left $5,000 apiece to his two daughters, and you responded, No. Was that right?

83 A. That is what I said.

Q. You afterwards testified that afterwards there was trouble. Now, I want you to state, as clearly as you can, how this trouble began.

A. The trouble was by Mrs. Kennedy pointing out to me that the will was not just, as I said. She was my stepmother.

Q. What else was there that made you think the will was unjust besides what Mrs. Kennedy said to you?

A. I know that the father said, as soon as he told me——

By Mr. CRAGIN: I object to any statement by Mr. Campbell, to this witness.

Q. What did Mr. Campbell say?

A. Mr. William H. Campbell told me that he intended leaving more to his son than to his daughters, because he helped to make the money.

Q. Now, that is not exactly in response to my question. Did you have any other suggestion in respect to why that $5,000 apiece had been left to the daughters from anybody else?

A. Mrs. Admiral Russell wrote a letter to Mrs. Kennedy, and in that letter she said she had written a similar letter to Alexander Russell; that I was not to blame for saying that Julia Russell had influenced her father to alter the will first by the will which was made in 1878.

Q. I understand that you had offended Mrs. Campbell by expressing an objection to that will, one of the reasons being that her daughters, or one of them, had caused that $5,000 apiece to be put in the will. What made you say that? Where do you get that information from?

84 A. I do not know.

Q. How came you to say that Mrs. Russell, the daughter, had anything to do with that $5,000?

(Mr. CRAGIN: I object.)

A. Because Mrs. Admiral Russell told me there was a will made in advance of that will, and after Mr. Campbell's former will he changed that will, and Mrs. Admiral Russell knew that the will was changed, and asked me if I did not think Mrs. Julia Russell had something to do with the changing of the will, and I did think so.

Q. Now, did your thinking so and stating so cause any unpleasantness between you and Mrs. Campbell?

A. Yes; and the whole family.

Q. How was that unpleasantness removed?

A. I told you, by Mrs. Admiral Russell exonerating me, saying

that I did not start the report that Julia changed the will, for she herself was responsible.

Q. After Mrs. Admiral Russell made that explanation, what were the relations between you and Mrs. Campbell from that time until her death?

A. Friendly.

Q. Can you give the date at which the exoneration took place, the date of Mrs. Admiral Russell's letter?

A. Mr. Moore can give the date.

Q. Was it during the lifetime of Miss Ellouise or after her death?

A. After her death.

Q. How long after her death?

A. I think Miss Elouise died in 1885. I know it was somewhere along '88.

Q. After her death?

A. Yes.

85 Q. The fact I wanted to get at was whether you and Mrs. Campbell were upon friendly terms at the time of the death of Miss Ellouise?

A. Well, the visits never ceased.

Q. But their was at one time a coolness between you and Mrs. Campbell—you have testified to that?

A. Yes.

Q. Now, what I am trying to get at *is* whether that period of coolness was after the death of Miss Ellouise?

A. It was before, and continued for some time after. If you have got the date of Mrs. Russell's letter you can see when the coolness subsided.

Recross-examination.

By Mr. CRAGIN:

Q. This unpleasantness you speak of continued over a period of four or five years?

A. Yes, sir.

Q. Look at this letter and state in whose handwriting it is. State also whether it refers to the unpleasantness you have been testifying about.

A. That is Mrs. Mary I. Campbell's handwriting.

Q. Has it any reference to this unpleasantness you have been testifying about?

A. Yes; it has.

Mr. Cragin offers this letter in evidence, and it is marked by the examiner "Defendants' Exhibit No. 1."

Q. In whose handwriting is that name on the back of the paper?

A. It looks like the same.

86 Redirect.

By Mr. CLAUGHTON:

Q. You have just been shown a letter which you recognize as the handwriting of Mrs. Campbell. This letter has been offered in evidence?

A. Yes.

Q. Did you receive a letter in the same handwriting, of similar import?

A. I think so.

Q. Look at that and say if that is the letter which you received. Just look at the envelope.

A. Yes.

Q. Is that the envelope in which it came?

A. That is her handwriting. I think it is.

Q. Did that letter come through the mail?

A. I think that letter was left at the house.

Q. Look at that letter, please, and state in whose handwriting that is.

A. This letter — addressed to me. This is the letter addressed to me.

Q. Was this letter received during the lifetime of Miss Ellouise Campbell?

A. Now, Mr. Claughton, I do not remember anything about that. I cannot remember the date.

Q. Was it the receipt of this letter that settled the unpleasantness between you and Mrs. Campbell?

A. No, sir. The unpleasantness was not settled until Mrs. Admiral Russell wrote me that letter. She settled the unpleasantness. Her letter did, rather.

87 At request of counsel for complainants, an adjournment was had till Wednesday, Oct. 28, at 12 o'clock.

OCT. 28, 1896—2 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. H. O. Claughton, for the complainant-, and Mr. Chas. H. Cragin, for the defendants.

Redirect examination of Mrs. MARY K. CAMPBELL resumed.

By Judge CLAUGHTON:

Q. Please state as consecutively as you can when the unpleasantness began which was referred to in your examination the other day, whether it was during Miss Ellouise Campbell's lifetime or not, when the unpleasantness ended, and whether that ending was during her lifetime or not.

Mr. CRAGIN: I object to this testimony for the reason that she has already testified as to all the points covered by the question just asked. I make this objection in addition to my former objection as to her competency.

A. I wish to say that at the time of Mrs. Campbell's return from Philadelphia she was as broken in mind as she was in body, incapable——

Q. That is not answering my question. I desire to know when this unpleasantness began and when it ended.

A. The unpleasantness began after Mr. William Campbell's death, which took place in 1881, and it continued and was at its height until 1882, and it ceased before Miss Ellouise'- death, which occurred in 1885. The cause of the cessation was a letter received from Mrs. Admiral Russell exonerating me from all blame.

Mr. CRAGIN: Have you that letter?

88 The WITNESS: Yes, sir. (Produces the letter.)

(This letter is placed in evidence and marked Exhibit T No. 1.)

The WITNESS: From that time until Mrs. Campbell's death we were good friends. Mrs. Admiral Russell went to California on Nov. 8, 1883. It was after she reached California, I am quite positive, in 1884, that she wrote this letter to Mrs. Kennedy. My daughter, knowing what vital import a portion of it was, handed it to me. My daughter May handed that letter to me.

Q. Now, Mrs. Campbell, after that reconciliation took place, which you say was in 1884, what were the relations existing between you and Mrs. Campbell, Mary I. Campbell, until the time of her death?

A. Affectionate and kind until the hour of her death.

Q. Did you see her before she went to Philadelphia to live?

A. Why, often.

Q. Did she have any conversation with you before she went to Philadelphia, with respect to her feelings, and if she said what it was?

By Mr. CRAGIN: I object to the question.

A. She told me she was unhappy at her daughter's home, Mrs. Moore's.

Q. State what she said.

A. That is what she said.

Q. Did you see her after she went to Philadelphia?

A. Several times.

Q. Where did you see her after she went to Philadelphia?

A. She lived with her son-in-law, Col. Russell.

89 Q. Did I understand you to say that you saw her at her son-in-law's in Philadelphia?

A. Yes; that is where she was until she returned to Mrs. Moore's house.

Q. Did you see her more than once there?

A. Several times.

Q. Have any conversations with her about her family matters?

A. I did.

Q. State what they were.

By Mr. CRAGIN: I object to the question.

A. That during the first few years of her residence with Col.

Russell she was perfectly happy. In 1889 she was unhappy at Col. Russell's house; just as unhappy at Col. Russell's house as she has been part of the time at the home of her son-in-law, F. L. Moore.

Q. Do you know when she returned from Philadelphia to Washington?

A. I think it was in 1892.

Q. Did you see her after her return?

A. Frequently.

Q. How long did she live after her return from Philadelphia to Washington?

A. As I said, she returned in 1892, and she died the 7th of May, 1893.

Q. You stated what was her mental condition after her return from Philadelphia?

By Mr. CRAGIN: Question objected to.

A. She was as weak in mind as she was in body.

Q. In your cross-examination you were asked whether or
90 not Mrs. Campbell had not given you some money, and your answer was that she gave you a thousand dollars in two installments of five hundred dollars each. How did you receive that money?

A. The first check was enclosed in a letter to Mr. Moore, which he sent me. Now, the other. I do not know so much about the other—how I got it—but I do know that Mr. Moore called to see me, for I received the check, and he expressed pleasure that I had received it. I thought it was through his instrumentality—through his influence—that I received it, and he said it was not so, and he only wished it was thousands instead of a thousand, showing his friendly relation to me.

Q. Please look at these letters and tell me in whose handwriting they are.

A. They are both in Mrs. Mary I. Campbell's handwriting, my mother-in-law.

Mr. Claughton offered these letters in evidence and they were marked by the examiner Exhibit T No. 2 and Exhibit T No. 3.

Q. What time did you give the death of Mrs. Campbell—7th of May? Did you say 7th of May?

A. I said the 7th of May, 1893, but that is a mistake. It was the 7th of August.

Q. In one of these letters of Mrs. Campbell it said Mr. Moore would hand you a check. Whose check was it?

A. I think it was Mrs. Campbell's check.

Recross-examination:

Q. Mrs. Campbell, I do not think you said anywhere what the date of your husband's death was?

A. Fifteenth of August, 1878.

91 Q. Do you know who drew the will of William H. Campbell?

A. I do not.

Q. Don't you know that your father drew it?

A. I had forgotten it entirely, but now that you say so I remember that he did, but I had forgotten it.

Q. Was Leonidas, your husband, alive at the time of the execution of that will?

A. Yes. That was in March. Let me see. Yes; he was.

Q. You have spoken of a thousand dollars having been given you by Mrs. Campbell, in two installments of $500 each, and also that she sent you for her grandchildren's benefit $100. Were there any other sums given by Mrs. Campbell to the family of Leonidas?

A. Not that I know of. Her son only lived a few months after the death of her husband.

Q. Mrs. Mary I. Campbell gave you or the children through you——

A. As well as the other daughters, $100, to be used as Christmas gifts.

Q. Were not there any other sums given besides this?

A. By Mrs. Mary I. Campbell, after the death of her son?

Q. At any time by Mrs. Mary I. Campbell.

A. I do not know of any.

Q. Didn't she give each one of her grandchildren $100 at the time they were married?

A. Yes; she did.

Q. Did she give you at any time any money herself?

A. Never. I think not, except that one hundred dollars at Christmas and the thousand dollars spoken of.

92 Q. You have referred to the injustice, I think, as you called it, of the bequests of $5,000 made to Mrs. Russell and Mrs. Moore and how that unpleasantness arose and how it was smoothed over and everything made all right again. Did you ever try to induce Mr. Campbell to make the will different from the way he had drawn it?

A. Never.

Q. Never mentioned to him that you thought the son ought to have more?

A. No, sir. He told me of his own accord that the son had helped to make that money, and it was his intention to give the son more than the sisters.

Q. But you never tried to induce him to leave him something in the will more than he did?

A. No; I did not.

Q. As I understand, there has been a charge of undue influence brought against Mrs. Russell in some way I do not want to go into the details of, but that subsequently Mrs. Mary I. Campbell wrote a letter, which I have introduced in evidence and which you have read and identified as hers and as to which you have testified you received a similar one, and upon the strength of that letter you became satisfied that the charge brought against Mrs. Russell was false, did you not?

A. Yes; I suppose I can answer that.

Q. In other words, you believed what Mrs. Campbell had written in that letter?

A. I did; yes; and she exonerated her daughter.

Q. And upon the strength of that, no doubt?

A. Yes.

93 Q. You have said something, also, about how you received a letter similar to the one I introduced in evidence. Did not Mrs. Moore bring you that letter to your house?

A. It was left at the house.

Q. Did not Mrs. Moore bring you that letter?

A. I have forgotten about that.

Q. Did she come in when she brought you that letter and see you and the children that were living there then?

A. I do not remember.

Q. Did you at that conversation, if you remember this part of it, tell her that you had only married Leonidas for his money?

A. I did not.

Q. Did you ever make such a remark as that?

A. No, sir.

Q. Never did?

A. No, sir.

Q. I think you also said that you did not have any correspondence with Julia Russell. Did you not have some correspondence with her in which you apologized—I do not mean by the word apologize that you used that word exactly, but did you not say you exonerated her and was sorry? Did you have any such correspondence as that?

A. I think I have a majority of the correspondence that took place at the time of the quarrel between myself, Col., and Mrs. Russell, and I find that I said that. I did not make an apology, but there was a letter which Mrs. Russell construed into an apology. I accepted her mother's exoneration of the daughter and wrote asking to be friends, and I did not say I am sorry for what I have done. I did not do it, because I know I did not.

94 Q. Then you were mistaken in your former testimony as to that?

A. She regarded what I wrote, after receiving an exoneration from her mother, as an apology. I have the letter she wrote in reply, and that was the meaning of this letter, simply. The unpleasantness was ended by Mrs. Col. Russell's exoneration. There was a sort of friendship on the surface before that time, and afterwards it was complete.

You asked me the other day if there was any unpleasantness between me and Mrs. Campbell, and I told you that she was angry because I criticised her husband's act, but nothing could have happened to cause an interruption in my friendship.

By Judge CLAUGHTON:

Q. About these Christmas presents—did anybody else get a Christmas present besides you?

A. Yes, sir; Mr. Moore and Mrs. Russell.

Q. Did any granddaughters get marriage presents?
A. Mr. Moore's daughter got the same. Each daughter had $100.
Q. You were asked whether your father did not write the will, and you said you thought he did. Did he write the last will of William H. Campbell, the one which was admitted to probate?
A. The 1878 will?
Q. Yes.
A. No.
Q. He had written a will?
A. A former will.
Q. He had written a former will?
A. That is the one I refer to.
95 Q. Did you ever hear from anybody that the will that your father wrote had been changed?

By Mr. CRAGIN: I object to the question.

A. I heard a new will was made in 1878.
Q. Who told you that?
A. I cannot remember that.
Q. Try and tax your memory.
A. I cannot say who told me that the will was changed.
Q. You mean to say that you cannot say or you won't say?
A. I cannot say; I do not know; I do not remember.

By Mr. CRAGIN:

Q. When did Mrs. Baker first tell you of this alleged gift of $12,000 between Mrs. Russell and Mrs. Moore by Mrs. Campbell?
A. It was after the death of Miss Elouise.
Q. How short after the death?
A. I expect it was a very short time, because she told me just as soon as Mrs. Campbell told her, and Miss Ellouise died October 1st, 1885.

Mr. Claughton hereupon announced that this closed his testimony-in-chief.

Adjourned by consent of counsel to meet Saturday, Oct. 31, 1896.

96

SAT., *Oct.* 31, 1896—12 o'clock.

Before signing her testimony Mrs. Mary K. Campbell made the following corrections in the presence of counsel, which were taken down by the examiner:

Page 21, beginning with the second sentence of the first answer: I said the $5,000 left to each of the daughters did not cause the trouble, but it was because Mrs. Admiral Russell attributed the change in Mr. Campbell's former will, which was written by my father, to Julia Russell by her influence over her father.

Page 31, second answer to the second question (testimony of October 28, 1896):

In the latter part of this answer I said that her son died after the

death of her husband. I wish to correct that. He died before the death of his father.

MARY KENNEDY CAMPBELL.

Subscribed by the examiner with the consent of counsel on both sides, the witness having been first duly sworn by the examiner before giving her testimony to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

97 *Exhibits to Complainants' Testimony.*

EXHIBIT T No. 1.

Private.

Before leaving home I wrote a note to Aleck Russell, telling him that when he asked me if I ever said to Mary Campbell, "Julia had something to do with Mr. C.'s will," I could have taken oath that I never said it and never thought of such a thing, and when Mary spoke to me about it I told her "she had been dreaming;" that after my father's death, when my mind was not constantly dwelling on his sickness, it flashed upon me that I spoke to Mary when she & John were riding, & I remarked, "Don't you believe Julia had something to do with it?" This came upon me like a flash of lightning, & I thought it over & over & then was sure of it & remembered exactly what I said. I told Alex. Mary was not to blame. I would take it all, & I hoped he & Julia would write to her & all be friends again; that life was too short for strifes & quarrels, & particularly in families. Alex. did not answer the letter, but always sends affectionate remembrances from Julia & himself to me & kind messages. Don't you think I was right in doing this? I do want a clear conscience. I write this to you in confidence. If you choose you can tell Mary, but please ask her not to mention it to any one, as you know even a little thing will create talk.

Aff., CORNIE.

98 EXHIBIT T No. 2.

PHILADELPHIA, *July 27th*, 1891.

MY DEAR DAUGHTER: I have been wishing to write you for some time and to ask your acceptance of a birthday present. Don't know the *date*, but will *anticipate*. Mr. Moore will hand you a check for five hundred dollars, which you will accept with my love. If I live until the middle of *September* I will give you the same amount; am sorry that I cannot send it in one payment and *earlier*, as I know your expenses must have increased the last year.

As I learned by a letter from Mrs. Baker that your family were with Edith, I will inclose this to Mr. Moore, who will send it to you;

don't devour that little responsibility; you know they slip away to a better fold sometimes.

I feel very much concerned about dear May Fry. How is she? Give her my love.

I hope dear Edith won't have her life worn out with the darkies. Since they got their freedom they have become so worthless. I would not have one in my house; indeed, I would board as long as I could now. We never know today whether we will have a servant tomorrow. Friday night, after smashing things up generally, Julia's cook took French leave, and we have not seen her since.

Give my love to each one, and believe me your affectionate

MOTHER.

99 EXHIBIT T No. 3.

PHILADELPHIA, *Sept. 4th*, '91.

MY DEAR DAUGHTER: Altho' prostrated in mind and body, hardly able to guide my pencil, must ask your acceptance of the remainder of my gift—five hundred dollars—for which you will find inclosed a check from Mr. F. L. Moore. I did not expect it quite so early in the month, but am glad he was able to raise it.

Thanks to dear Edith for her kind letter; love to dear May; am thankful to hear that she is better. Can't write more.

Affect'ly, M. I. CAMPBELL.

EXHIBIT T No. 4.

I desire to state that the charge which has been brought against my daughter Julia as having in any way, either directly or indirectly, used any influence connected with her father's will is false in every particular. Especially with regard to the legacy of $5,000 each to her and her sister, I wish to say that it was done at my suggestion, without the knowledge of either of them, knowing, as I did, that our son had received considerably more than either of his sisters. We did it in justice to them, and even this amount did not make them equal to him, as the books now show $6,897.62 more than either of them received.

100 I wish, my dear children, to know that the few days my Heavenly Father may permit me to remain in this "vale of tears" it shall be my endeavor and sincere prayer that we may live in peace & love, and that when I am gone they may strive to do the same, & that we may appear before the throne a family chain not one link missing.

MARY I. CAMPBELL.

MARKED FOR IDENTIFICATION EXHIBIT T No. 5.

PHILADELPHIA, *March 22nd*, 1886.

To my dear daughter-in-law, Mary K. Campbell, I give, "Dones' Bible Gallery" album, tumbler in basket made by Ella, (measuring line) (My faith looks up to thee)

Fry

To my dear granddaughter Gertrude May, Campbell, I give,

(butter knife) pictures of her cousins Lizzie and her husband, boxes of silk & buttons, souvenir of 1834, book, "I will lift up mine eyes unto the hills."

To my dear granddaughter, Blanche H. Towson, I give, (pictures of her three cousins Lizzie, Susie, & Jennie Russell,) book, "Life's Golden Lamp," medicine glass. Tray cover.

To my dear granddaughter, Edith Campbell, I give boxes of silk and buttons, black tin box, (picture of her cousin Jennie Russell, Scripture roll) "Light on life's path."

101 To my dear granddaughter, Nannie Campbell I give, (work-table with two drawers, black morocco box, box with velvet lid). Book, "The Better Land," strive to reach it *my dear*.

To my dear grandson Willie H. Campbell I give, picture of his father when a small boy, his grandfather's comb and brush, small round glass.

To my dear grandson, John K. Campbell I give, (basket for paper, his father's penknife) to be kept by his mother until he is 18 years old. Testament, read, mark learn, and may it tend your thoughts to that better land.

To my dear granddaughter Mary Leontine, Ingle, Campbell, I give, (my trunk marked M. I.) Thimble, handkerchiefs, (silver spoon) that has fed my children, grandchildren and can now feed my great-grandchildren. Three nest-birds painted on blue silk, Little Jack Horner. *Testament*, make it the guide of your youth, and it will be the support of your age.

As I have given the most of the foregoing articles, Jennie will send the remainder to mother with this paper.

M. I. CAMPBELL.

I don't wish my grandchildren to change their dress.

M. I. C.

PHILADELPHIA, *April 19th*, 1890.

[It is my wish that my daughters give my friend Mrs. Laura Baker one thousand dollars, this sum to be divided into three parts will be a small amount for each to give and I hope they will grant my desire willingly.]*

MARY I. CAMPBELL.

102 Mrs. L. C. CAMPBELL,
610 *E Street N. W.*,
Washington, D. C.

PHILADELPHIA, *May 25th*, 1891.

As the circumstances of our friend, Mrs. Baker, have changed so much for her support and comfort, I recall the above request.

M. I. CAMPBELL.

[* Words enclosed in brackets erased in copy.]

EXHIBIT T No. 6.

PHILADELPHIA, *Nov. 26th*, 1889.

MY DEAR DAUGHTER: I am hardly myself; had an alarming attack of vertigo on Sunday; fell suddenly, just crossing the room; could not speak for some time; only another call to leave this "vale of tears and be with Christ," which is for better. I am able only to write a few lines about poor Miss Mason; am sorry she can't get in the home, but you will see the difficulties by the card inclosed from Wm. Mahon. By the time there is a vacancy I hope Miss M. will have raised the additional amount. Pity she did not remain in Georgetown, and I wonder she did not stay with her cousin. I fear she is capricious, which keeps her unsettled. I am not able to write her, and will thank you to ask her acceptance of the inclosed fifteen (15) dollars, with my love. Please hand the enclosed
103 order to Mr. Moore and he will give you the amount for her.

Must close with an affectionate remembrance to all the loved ones.

I remain, yours sincerely, M. I. CAMPBELL.

EXHIBIT T No. 7.

PHILADELPHIA, *Nov. 19th*, 1889.

MY DEAR DAUGHTER: Thanks for your kind letter, received some time since. I am glad to hear you are all well, and that my dear little namesake is so much pleased with her school. It must be very pleasant to have her come home so often. I was pleased to see May and the Doctor.

I am writing you now on a very important subject; have just received a very grateful letter from Miss Mason, asking for my influence to get her a home for the balance of her days in the Women's C. Association, which would require $100 admittance fee, with a room all to herself—those only are taken free who go in a room with others. You know she is too independent & eccentric to do the last. I thought she had a home in Georgetown, and never knew why she left it. She is very fickle & might not stay long in another, but still, dear Mollie, if you think she can be relied upon, I will give fifty dollars ($50) if your family and other friends will give the remainder. Poor woman, she has been a wanderer for a long time. I would be glad to have her settled down, if the
104 word *settled* will apply to one who is as fond of changes as she is.

I think if you would see the president and say that we have been interested in Miss M. for many years, and that I am an annual subscriber to the institution, perhaps the board would make a deduction in her case. It would be a relief to you, for she has often told me how kind you and the girls were to her. Did you know she wrote to me? Let us attend to this call of duty immediately, as the rooms may become occupied and a meeting of the board may

be necessary. If you think proper, tell her this, as I shall not write her until I hear from you. With love to all, from yours aff.,

M. I. CAMPBELL.

EXHIBIT T No. 8.

PHILA., *Oct.* 22*nd*, 1886.

MY DEAR GRANDDAUGHTER: I was very much gratified by the receipt of your kind letter, the more so as I feared your family had lost sight of me, not having heard from you since we parted; am sorry to hear that your sisters are not the better for their trip. Tell them to join the ladies of your church in their work of faith & labour of love. This will make them useful as well as ornamental, and, I think, healthier & happier.

I am glad to hear you are improving the surroundings of your home; it is pleasant work. Many years ago I enjoyed it, but I have done with *earth*, and am only waiting for my Heavenly Father (though unworthy) to give me an humble seat at his right hand, where are pleasures forevermore. Meet me there, my dear. Give your young heart to the Savior. You cannot begin to serve him too soon, who has done so much for you.

Say to your mamma that I will take the liberty to direct to her care a package for Mrs. Baker early next week. Please send her a request to call for it.

Please thank dear Blanche for her kind letters & the pretty little darling just received. He is like his father. She will excuse my not writing a letter, as my eyes are very painful and my hand unsteady. Much love to them.

I hope you will excuse my writing with pencil, as I cannot guide a pen; am glad dear Willie is so comfortable; hope he does not suffer with those ill turns.

While I am free from much pain, am loseing strength daily.

Your cousin, Lizzie Dullas, has a nice little daughter a month old.

I close with love to all. From your affnt.

GRANDMA.

EXHIBIT T No. 9.

PHILADELPHIA, *Oct.* 31*st*, 1890.

MY DEAR DAUGHTER: I have been anxious to hear about your dear children, whether they were on the ocean, under the ocean, or on *terra firma*. If they are home, give me a little of their experience. *Did it pay?* Of course, a few dimes had to help pay. How could you let so many of them go at the same time? I would have kept Mary to go with her brother two or three years hence. I did not know until Mrs. Baker wrote me that she had gone. Did they have any storms? "Did the raging billows roll or did the rol-ing billows sleep?" How many of them would like to go again?

I suppose you heard that Willie Russell had gone to Randolph

county, Va., to cut all the timber down there. I fear they are a little outside of civilization, and that he is a pioneer in that region, which will make them a much less comfortable home than the one they left; they will suffer many privations, but not more than my parents did when they followed Congress to Washington.

We had a call from Edith on their way home. Are they with you, or have you shook them off? Matrimony has reduced your family. We will be thankful that it has not been by death, and pray that they may all be spared and prepared to meet in the better land. How is dear Willie? Mrs. Baker wrote me some time ago that he had been sick.

I had two great-grandchildren in one month. They now count thirteen.

Now dear Mollie, I want to talk with you about our dear Laura Baker. I do feel so sorry for her. What will she do if turned out of that place? She thinks if she can get a house in the city, with a few boarders, which have been promised, she can live; but you know it takes means to start with. Let our widows' mites be saved up to help her in case of this necessity. She told me five years ago that her aunt said she intended giving her the place. Now says she wants money and is trying to sell it. I do hope she will not be disturbed this winter. She says her son gets very little
107 more than his board and washing, and his place is not permanent. I have been trying to induce him to join the Young M. C. Association, knowing that they often find employment for their members. I wrote that Mr. Moore would assist him. She said he had a cousin who was a member and would introduce him. I said I would like to help him if I knew what his liabilities were. Have not heard from her since Sept. 5th, and do not know what his cousin has done for him.

Please tell me who the cousin is that she speaks of, as I never knew they had a relation in Washington. If you should see Laura, please say to her that I have been expecting to hear Perry's decision. Remember me affectionately to all your family, and believe me yours truly,

M. I. CAMPBELL.

108 EXHIBIT T No. 40.

Liber E. C. E. No. 30, folio 82. K. M.

William H. Campbell *et ux.* to Alex. W. Russell and L. C. Campbell. } Recorded March 2nd, 1868. Trust.

This indenture, made this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, between William H. Campbell, and Mary T. Campbell, his wife, of the city of Washington, in the District of Columbia, of the first part, and Alexander W. Russell and Leonidas C. Campbell of the same place of the second part,

Witnesseth, that the said parties of the first part for and in consideration of the love and affection they bear towards their daughter Julia C. Russell, wife of the aforesaid Alexander W. Russell and of the sum of five dollars lawful money to them in hand paid by the said parties of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have given, granted, bargained and sold, and by these presents do give, grant, bargain and sell, alien, enfeoff, release, convey and confirm, unto the said parties of the second part, and their heirs as joing tenants all that certain piece or parcel of land situate and lying in the aforesaid city of Washington and which is part of lot numbered four (No. 4) in square numbered four hundred and fifty-five (in sq. No. 455) according to the plat or ground plan of said city and beginning at a point on the north line of F street, north fourteen feet from the southwest corner of said lot numbered four as afore-
109 said, and runs thence eastwardly along the line of F street north nineteen feet and five inches (19 ft. 5 in.) thence north on a line at right angles with said street to the public alley in the rear of said lot thence west along the line of said alley nineteen feet and five inches (19 ft. and 5 in.) and thence south to said F street, north and place of beginning. Together with all and singular the buildings, improvements, ways, rights, privileges, advantages and appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, and interest trust property, claim and demand whatsoever at law and in equity of them the said parties of the first part of, in and to the same. To have and to hold, the said hereinbefore-described piece, parcel or part of a lot of land with the appurtenances thereunto belonging unto the said parties of the second part their heirs and assigns as joint tenants to the use of the said parties of the second part, and their heirs. In trust nevertheless and in and upon the following trusts and each of them that is to say first in trust for the sole separate and exclusive use, benefit and behoof of the aforesaid Julia C. Russell, for and during her natural life, free, clear and wholly discharged of and from any and all marital rights of her present husband or of any future husband should she become a widow and marry again, and so that she the said Julia C. Russell can and may freely and without let or hindrance of any sort, use, and occupy the said hereinbefore-described parcel of land and premises with the appurtenances thereto belonging and receive receipt for and use and apply in her own way and for her separate benefit, any and all nett rents, issues and profits issuing out of or arising from the same or any part thereof, free, clear, and dis-
110 charged of and from all interference interest or control of her present or any future husband, and also wholly free, clear, and forever discharged of and from all and any debts, contracts agreements, and engagements of every sort and nature of her said husband present or future as aforesaid and secondly, in trust to duly execute and deliver any and every indenture *of* lease mortgage, deed of bargain and sale or other assurance or conveyance whatever known in the law of and for the aforesaid parcel of land and premises or any part thereof to such person or persons for such

interest or interests, estate, or estates therein, and to such use or uses or upon such trust or trusts as she the said Julia C. Russell notwithstanding her present or future coverture, may or shall at any time or times during her natural life, by any writing bearing her signature and under her seal request, direct or require to validate carry out and fully effectuate any and all agreement or agreements that she may at any time or times during her natural life and notwithstanding her present or future coverture, make, or enter into with any person or persons for the demise, mortgage, or sale of said land and premises or any part thereof and if at any time she shall bargain and sell the aforesaid land and premises and all estate therein then thirdly in trust, that the proceeds of her said sale be received or collected by the said parties hereto of the second part, their heirs and assigns and by them as early as practicable thereafter invested in such other real estate or in such other property or securities as she the said Julia C. Russell may by any writing under her signature and seal request and direct and the said substituted real estate or other property or securities shall thereafter and from the time of its said substitution be held for the said parties hereto of the second part, their heirs, executors, ad-
111 ministrators or assigns, with the same powers and in and upon the same trusts and every of them (and with no other powers and upon no other trusts than those) hereinbefore or hereinafter conferred, expressed and declared in relation or with respect to the parcel of land and premises hereinbefore described and hereby granted and conveyed or intended so to be as aforesaid, but if she the said Julia C. Russell shall not at any time during her natural life bargain and sell the aforesaid parcel of land and premises or any part thereof then fourthly in trust that at and after her decease the same and every part, thereof then unsold by her as aforesaid shall be held by the said parties hereto of the second part and their heirs to and for the use of the children and grandchildren of the said Julia C. Russell, and the said Alexander W. Russell and to and for the use of the heirs of said children and grandchildren as tenants in common and so that such of said children as are living at the time of their mother's decease, may take equal shares and such grandchildren as may be then living and whose mother or father as the case may be is then deceased, may represent their deceased parent and take the same share as their deceased parent would take if then living and to and for no other use whatever.

In testimony whereof, the said parties hereto have respectively hereunto set their hands and affixed their seals on the day and year first hereinbefore written.

WM. H. CAMPBELL. [SEAL.]
MARY T. CAMPBELL. [SEAL.]

Stamp, 5c., aff'd.

Signed, sealed, and delivered in the presence of—
C. BESTOR.
EDM. F. BROWN.

112 DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

I, Edmund F. Brown, a notary public in and for the county of Washington aforesaid, in the District of Columbia, do hereby certify that William H. Campbell, a party to a certain deed bearing date on the 25th day of February, in the year of our Lord eighteen hundred and sixty-eight, and hereto annexed, personally appeared before me, in my county aforesaid, the said William H. Campbell being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed; and, further, I do hereby certify that Mary T. Campbell, the wife of William H. Campbell, a party to a certain deed bearing date on the 25th day of February, in the year of our Lord eighteen hundred and sixty-eight, and hereunto annexed, personally appeared before me, in my said county, the said Mary T. Campbell being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Mary T. Campbell, acknowledged the said deed to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. *In testimony whereof* I have hereunto set my hand and affixed my notarial seal this 25th day of February, in the year of our Lord eighteen hundred and sixty-eight.

EDM. F. BROWN,
Notary Public.

[NOTARIAL SEAL.]

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber E. C. E. No. 30, fol. 82 *et seq.*, one of the land records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

Office of the recorder of deeds, Washington, D. C., November 17, 1896.

113 EXHIBIT T No. 11.

At the request of Frederick L. Moore and Hillary L. Offutt the following deed was recorded the 5th day of March, 1868, to wit:

This indenture made this 25th day of February in the year of our Lord eighteen hundred and sixty-eight, between William H. Campbell and Mary I. Campbell, his wife, of the city of Washington, in the District of Columbia of the first part, and Frederick L. Moore and Hilleary L. Offutt of the county of Montgomery, in the State of Maryland of the second part, witnesseth, that the said parties of the first part, for and in consideration of the love and affection they bear towards their daughter Christiana V. Moore, wife of the aforesaid Frederick L. Moore, and of the sum of five dollars, lawful money to them in hand paid by the said parties of

the second part, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the said parties of the second part and their heirs as joint tenants, all those certain pieces, parcels, tracts or parts of tracts of land situate lying and being in Montgomery county, in the State of Maryland, called "Clagett's Purchase" "Labyring" or by whatever name or names, the same or any part thereof may be called, which are included within the following metes and bounds, courses and distances, to wit: Beginning for the same at a point on the west side of the turnpike road leading from Georgetown in the District of Columbia to Rockville in the State of Maryland, where the same is
114 intersected by the dividing line between the said tract of land called "Clagett's Purchase" and the tract of land adjoining thereto on the south, and now, or formerly, owned and occupied by one Robert Dick and running thence, north, two and a half degrees west, with the line of the said turnpike road, one hundred and two perches, then north eighty-nine and a half degrees west, forty perches and forty-eight hundredths of a perch; then north five degrees west, eighteen perches, and forty-eight hundredths of a perch; then south eighty-four and a half degrees west, thirty-eight perches; then south eighty-eight degrees west, thirty perches; then south eighty-eight and a half degrees west, thirteen perches; then south five and a half degrees east, sixty-seven perches; then south sixteen and a half degrees west, eleven perches and twenty-four hundredths of a perch; then south eleven degrees west, ten perches; then south three and a half degrees west, twenty-nine perches to the said dividing line and then east and by the said line to the place of beginning containing eighty-five acres, two roods, and one perch of land, more or less, with all and singular the buildings, improvements, rights and appurtenances to the same belonging, and all the estate, right, title and interest, at law and in equity of them the said parties of the first part, of, in and to the same. To have and to hold the aforesaid pieces, parcels, tracts, or parts of tracts of land hereinbefore described with the appurtenances thereto belonging, or in any way appertaining, unto the said parties of the second part, their heirs and assigns, as joint tenants to the use of the said parties of the second part and their heirs forever. In trust nevertheless, and in and upon the following trusts and each of them that is to say: First, in trust for the sole separate and exclu-
115 sive use, benefit and behoof of the aforesaid Christiana V. Moore wife of the aforesaid Frederick L. Moore, for and during her natural life, free, clear and wholly discharged of, and from any and all marital rights of her said husband, or of any future husband should she become a widow and marry again, and so that she, the said Christiana V. Moore can and may freely and without let or hindrance of any sort use and occupy the said hereinbefore-described pieces, parcels, tracts or parts of tracts of land, and premises, with the appurtenances thereto belonging, and receive, receipt for, and use and apply in her own way, and for her separate

benefit any and all nett rents, issues and profits, issuing out of or arising from, the same or any part thereof, free, clear and discharged of and from all interference, interest or control of her present or any future husband, and also wholly free, clear, and forever discharged of and from all and any debts, contracts agreements and engagements of every sort and nature, of her said husband present or future as aforesaid: And secondly in trust to duly execute and deliver any and every, indenture of lease, mortgage, deed of bargain and sale, or other assurance or conveyance whatever, known in the law, of and for, the aforesaid parcels, tracts or parts of tracts of lands and premises, or any part thereof, to such person or persons for such interest or interests, estate or estates, therein, and to such use or uses upon such trust or trusts, as the said Christiana V. Moore notwithstanding her present or future coverture, may or shall at any time or times during her natural life by any writing bearing her signature and under her seal, request, direct, or require, to validate or carry out, and fully effectuate any and all agreement or agreements, that she may at any time or times during her
116 natural life, and notwithstanding her present or future coverture make or enter into, with any person or persons for the demise, mortgage or sale of said land and premises,or any part thereof and if at any time she shall bargain and sell the aforesaid land and premises and all estate therein, then, thirdly in trust, that the proceeds of her said sale be received or collected by the said parties hereto of the second part, their heirs and assigns, and by them as early as practicable thereafter, invested in such other real estate or in such other property or securities as she the said Christiana V. Moore may by any writing under her signature and seal, request and direct, and the said substituted real estate or other property or securities shall thereafter and from the time of its said substitution, be held by the said parties hereto of the second part, their heirs, executors, administrators or assigns, with the same powers and in and upon the same trusts and every of them (and with no other powers) and upon no other trusts, than those) hereinbefore, or hereinafter conferred and declared, in relation or with respect to the prices, parcels, tracts or part of tracts of land and premises hereinbefore described and hereby granted and conveyed or intended so to be, as aforesaid, but, if she, the said Christiana V. Moore shall not at any time during her natural life, bargain and sell the aforesaid land and premises, or any part thereof, then fourthly, in trust, that at, and after her decease, the same and every part thereof then unsold by her as aforesaid, shall be held by the said parties hereto of the second part, and their heirs, to and for the use of the children and grandchildren of the said Christiana V. Moore and the said Frederick L. Moore and to and for the use of the heirs of said children and grandchildren, as tenants in common
117 and so that such of said children as are living at the time of their mother's decease may take equal shares, and that such grandchildren as may then be living, and whose mother, or father, as the case may be, is then deceased, may represent their deceased

parent and take the same share as their deceased parent would take if then living: and to and for no other use whatever.

In testimony whereof the said parties hereto of the first part have respectively hereunto set their hands and affixed their seals on the day and year first hereinbefore written.

WM. H. CAMPBELL. [SEAL.]
MARY I. CAMPBELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. BESTOR.
EDM. F. BROWN.

[Int. (5 cts.) rev.]

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

I, Edmund F. Brown, a notary public in and for the county of Washington aforesaid, in the District of Columbia, do hereby certify that William H. Campbell, a party to a certain deed bearing date on the 25th day of February, A. D. 1868, and hereto annexed, personally appeared before me in my county aforesaid, the said William H. Campbell being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed; and, further, I do certify that Mary I. Campbell,
118 wife of William H. Campbell, a party to a certain deed bearing date on the 25th day of February, A. D. 1868, and hereunto annexed, personally appeared before me in my said county, the said Mary I. Campbell being personally well known to me as the person who executed —, and she, the said Mary I. Campbell, having the said deed fully explained to her, and being by me examined out of the presence and hearing of her said husband "whether she doth execute and acknowledge the same freely and voluntarily and without being induced so to do by fear, threats, or ill usage by her said husband or by fear of his displeasure," declareth and saith that she avers and acknowledges the same to be her act and deed, and that she wishes not to retract it.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this 25th day of February, in the year of our Lord eighteen hundred and sixty-eight.

EDM. F. BROWN,
Notary Public.

[SEAL.]

STATE OF MARYLAND, *Montgomery County,* } *To wit:*

I hereby certify that the aforegoing is a full and true copy of a deed in trust from William H. Campbell *et ux.* to Frederick L. Moore and Hilleary L. Offutt, trustees, as the same appears of record in Liber E. B. P. No. 5, folios 31, 32, 33, & 34, one of the land records of Montgomery county.

119 In testimony whereof I hereto set my hand and affix the seal of the circuit court for Montgomery county, at Rockville, this 20th day of November, 1896.

[SEAL.] JAMES ANDERSON,
Clerk of the Circuit Court for Montgomery County.

EXHIBIT T No. 12.

1680 31ST ST., *M'ch 12th*, 1883.

DEAR MARY: Your letter to my mother is at hand. At her request I reply. She received a letter from Miss Mason stating that you had tried to dissuade her from returning the small gift sent to her in kindness at Christmas. The letter was unnecessary, as mama is not aware of having ever accused you of any responsibility in the matter.

Miss Mason also wrote: "No reply is needed unless you desire it." Therefore mama did not reply, as she declined all further communication with Miss Mason upon any subject whatever, in consequence of her two insulting notes as well as of her interference and grat-itous advice in her family matters.

Mama has had no desire to have interrupted the visits of yourself or your children; would regret the further severance of the tie between herself and her son's family.

She will be always glad to see you all. She can reply no further without reopening discussions with which she is done.

120 She also sends thanks for the very beautiful verses enclosed.

Sincerely yours, GINNIE C. MOORE.
MARY I. CAMPBELL.

EXHIBIT T No. 13.

WASHINGTON CITY, *Aug. 25th*, 1876.

MY DEAR BLANCH: I received your very kind letter of the 10th and thank you for it. It is beautifully written, and I feel proud of it. My thoughts are on you all continually, and as I sit at my window I look across the street, at your home & see the blinds closed, I feel sad indeed. There is scarcely an hour in the day your grandma is not talking about her absent children, altho' they have been very kind about writing, for scarcely a day passes without hearing from some of them, either by letter or through your uncle John. Ella & Julia have both written us, & they seem to be enjoying themselves greatly. Julia at last accounts had gained 12 lbs. You- uncle Fred. was here this a. m. and seemed to be disappointed that Ginnie did not return yesterday, as was expected, but Mr. Russell and three of the children. Julia was very anxious for her to remain another week, so she has concluded to do so, and will return next Thursday; the girls will return soon after their mother.

I wrote your pa yesterday. I have sent the Star paper every
121 day since he left. The city is very dull; many are passing through on their way to the Centennial and others returning; but as Congress has adjourned they tarry only a few hours.

The Sabbath after you left was our communion, and as I passed by your father's pew I felt sad that you were all absent. It was a very interesting service. Five were added to the communion. I go early to the church on Sunday morning to be present at the close of the school to hear the delightful singing. Several of the teachers and scholars are absent, but still the school is well attended. I trust all the absentees will return in due time greatly improved by their recreation. Dr. Sunderland expects to leave this week for a few weeks' absence. Mr. Wright returned from N. E. yesterday and expects to leave with his son Lloyd for Philadelphia to visit the Centennial on Monday.

It is pleasant here now. The thermometer, 3 p. m., is 80 in my room, but the nights are cool and comfortable for sleeping. We shall be very thankful if you all return safely to your home.

Tell the boys they must be good children and not give their parents trouble and take good care of each other.

Your grandma joins me in love to your pa, ma, all the dear children, and your grandpa & grandma Kennedy, and so I will now close. I inclose a little note for your pa; please hand it to him.

Your grandpa, CAMPBELL.

122 *Testimony on Behalf of the Defendants.*

Filed January 12, 1897.

FRIDAY, *November 6th*, 1896—12 o'clock m.

Met pursuant to agreement.

Present: Mr. H. O. Claughton, for the complainants, and Mr. C. H. Cragin, for the defendants Moore and Russell.

Mrs. Emily Allen.

Mrs. EMILY ALLEN, a witness of lawful age, being duly sworn by the examiner, deposed as follows:

By Mr. CRAGIN:

Q. State your name, age, and residence.

A. I am forty-eight years of age, my residence is 3421 U street N. W., Washington, D. C., and my name is Emily Allen.

Q. Where were you in the spring of '81 to the fall of '83?

A. At Mr. Moore's.

Q. What were you doing there?

A. I was taking care of Mrs. Mary I. Campbell.

Q. I want you to state, in your own way now, what you observed there in reference to Mrs. Campbell—her condition, mental and physical, and the treatment she received at the hands of Mr. and Mrs. Moore and the family; also anything that took place between the Moores and Mrs. Campbell, agreeable or otherwise.

A. Mrs. Campbell was very well while I was there and seemed

to be of sound mind, and, as far as any disagreeableness is
123 concerned, I never heard of any. She was always kind and good to Mr. Moore, and also to her grandchildren, Miss Ella and Mr. Will. They were just as kind and good to her as they could be, and everything was done for her comfort.

Q. Did she ever make any expression—use any expression—relative to the treatment she received there?

A. Never disagreeable to me. Never did, and I never heard anything disagreeable.

Q. Anything pleasant?

A. She would often say that she thought Mr. Moore was so kind and good to her, and Mrs. Moore also; always said they were so kind to her; done everything that she thought they could for her comfort.

Q. Did she seem to have any fear of Mr. Moore?

A. No, sir; I don't think she had any fear of anybody. She had a mind of her own, and she did not fear anybody. She was not afraid of anybody, I don't think.

Q. What kind of a disposition had she?

A. Well, Mrs. Campbell had a very good disposition. She was right quick of temper, but she had a very good disposition.

Q. Any incidents that you recall showing the relationship between her and the family?

A. In the way of being disagreeable?

Q. Anything said or done by Mrs. Moore or Mr. Moore to Mrs. Campbell that would create unpleasant- in the mind of Mrs. Campbell?

A. No, sir; I never heard Mrs. Moore say anything unpleasant to Mrs. Campbell in my life.

Q. Did Mr. Moore?

A. Did Mr. Moore? No, sir.

Q. Do you know from observation there of her whether
124 she was a woman who gave a great deal to charity?

A. Yes, sir; she did.

Q. Did you ever see Mrs. Mary K. Campbell there?

A. No, sir; I hardly remember Mrs. Mary K. Campbell. I know she came there, but I do not remember her very well.

Q. Do you know Mrs. Laura Baker?

A. I 'most forgot her. I remember the name, but I do not remember how long she came or anything about her, any more than I know she came to Mrs. Moore's.

Q. Did anything take place upon any of the visits of either Mrs. Mary K. Campbell or Mrs. Baker that you recall?

A. No, sir; I do not remember about that.

Cross-examination.

By Mr. CLAUGHTON:

Q. How long were you at Mrs. Moore's?

A. I was there from the spring of '81 to October of 1883.

Q. I suppose you were not always present when Mrs. Campbell and Mrs. Moore were together?

A. My room was right next hers. I was generally in my room.

Q. What were your relations to Mrs. Campbell?

A. I was there taking care of her.

Q. In what capacity?

A. Generally when persons came to see Mrs. Campbell I would go into my room, but the door was never closed between us. I was always there.

Q. What would be the motive for leaving when somebody came into Mrs. Campbell's room?

A. I did not have any particular reason—only I just went
125 into my room.

Q. That they might have privacy, was that the object—in order that they might be private?

A. I did not care to stay in the room all the time.

Q. Would not that object be very much defeated by having your communicating door open?

A. I never heard anything unpleasant.

Q. You have said that when persons came to visit Mrs. Campbell that you left her room and went in yours in order that they might be private?

A. Yes, sir; but I could hear, if I had listened, what was said.

Q. It would be much better if you would answer my question. I did not ask you that.

A. It was in order that they might be private.

Q. If you left your communicating door open, would not that defeat your purpose of giving them perfect privacy?

A. Yes, sir; of course, but I never—sometimes I was in the room, sometimes; I never stayed there just to listen; sometimes I was sewing in the room.

Q. You have said that you know of your own knowledge that Mrs. Campbell was very charitable?

A. Yes, sir.

Q. Can you name any of her beneficiaries?

A. I think she used to—I know she sent the Children's—I know it was the Children's Home.

Q. How do you know that?

A. She told me so.

Q. Did she tell you how much she gave the Children's Home?

126 A. I am not certain. I know she gave sometimes as much as fifty dollars.

Q. Give us any particular time.

A. I cannot give that. I heard her speak of giving so much.

Q. Do you know of your own knowledge?

A. It was the Presbyterian Home. I had most forgotten the name of the home.

Q. You said at first it was the Children's Home.

A. Well, yes, Presbyterian; I cannot exactly get them right—think—I have most forgotten. It was the Children's Home.

Q. You wish to adhere to that?

A. I think Mrs. Campbell was at one time president of the Children's Home, or she gave a great deal to that home.

Q. Tell us how much a great deal is.

A. I should say she gave as much as fifty dollars.

Q. Charity donation?

A. That I cannot remember.

Q. Do you remember more than once?

A. Yes, sir; I do.

Q. How many times do you remember?

A. I could not tell you how many times. I could not say whether it was two, three, or four times.

Q. Was it as many as four times?

A. I could not say.

Q. Was it as many as three?

A. I suppose it was.

Q. Do you know?

A. I cannot say.

Q. But it was one time. During the same year or different
127 years?

A. I cannot say. I think she gave more than once or twice in the same year.

Q. You think. What do you know? That is the question. We want to know. Do you really know anything about it of your own knowledge?

A. I know she gave—at least I know that she told me she gave—$50 to the home at different times. I cannot tell the date. I never expected to be called upon to tell anything about it.

Q. How many times did she tell you?

A. Well, I could not say how many times that I was told.

Q. Was it as many as four times? You must excuse me, Mrs. Allen; it is my duty to ask you these questions. I am merely testing the accuracy of your knowledge.

A. I suppose she told me over twice, if I could remember.

Q. But you do not remember?

A. No.

Q. How did she come to tell you about it?

A. I cannot say.

Q. Was there any reason?

A. She was always talking to me about charity.

Q. Did she talk about any other charity?

A. Did she talk about any other charity besides this? Yes; oh, yes, sir.

Q. Name some other.

A. I cannot; I could not remember.

EMILY ALLEN.

128 Subscribed by the examiner with the consent of counsel on both sides, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Mrs. Margaret Courtney.

Mrs. MARGARET COURTNEY, a witness on behalf of the defendants, being duly sworn, testified as follows:

By Mr. CRAGIN:

Q. State your full name and your residence.

A. Margaret Courtney; thirty-seven years old; No. 1516 33rd street N. W.

Q. Will you state what you were doing from October, 1883, to June, 1886.

A. I was in Mr. Moore's family. I waited on Mrs. Campbell and did sewing and different things in the house.

Q. Now, will you state in your own way what took place at the residence of Mr. Moore during your stay there, showing whether Mrs. Campbell was of good health and mentally in a good condition, and anything, pleasant or unpleasant, that occurred showing the relationship which existed between the Moores and Mrs. Campbell, and any incidents that you recall.

A. Well, Mrs. Campbell was very well. Occasionally she would have little bad spells, but everything was very pleasant indeed. Mrs. Moore was perfectly devoted to her mother. Mrs. Campbell always breakfasted in her own room, but, of course, at dinner they did not come up to Mrs. Campbell's room, as was done in
129 the morning. After breakfast Mrs. Moore would go up to see her mother. The first duty was to go up to see her mother, and it was always, "A pleasant good morning, ma," and "Well, ma, you all right. Take the carriage and go out today. You stay in the house too much." Well, Mrs. Campbell she answered, "No, Jennie, I do not care about going out today." There was nothing more about it. It was the same thing the next, and everything was very pleasant, indeed. I do not remember of ever hearing an unkind word spoken, and Mrs. Campbell always spoke of Mr. Moore in the highest terms.

Q. Do you recall any incident that took place while you were there showing her feelings towards Mr. and Mrs. Moore?

A. Nothing unpleasant.

Q. Do you recall any incident that took place during that period showing the feeling existing between Mrs. Campbell and Mr. and Mrs. Moore?

A. There was nothing unpleasant, I know.

Q. Did Mr. Moore come in to see her?

A. Mr. Moore would go up to her room to see her.

Q. How many rooms has she on the third floor?

A. Mrs. Campbell occupied one room.

Q. And you occupied——

A. The next room. They were communicating rooms.

Q. Was there any other room there she had the use of?

A. No.

Q. Wasn't there a bath-room?
A. Yes.
Q. She had the use of that?
A. Yes, sir.
Q. What kind of a room was that which Mrs. Campbell had?
A. It was a very pleasant room.
130 Q. Did she ever speak to you about it?
A. No.
Q. Say anything unpleasant about it?
A. No; she rather liked that room.
Q. Did you ever observe any of the Moores listening at the door to any conversations?
A. Never.
Q. Did Mrs. Campbell ever refer to any such thing as that?
A. Never in my presence.
Q. Do you remember when Mrs. Campbell left there to go anywhere else?
A. Only when she went to Philadelphia, to Mrs. Russell's.
Q. Mrs. Mary I. Campbell?
A. She went to Philadelphia to go to Mrs. Russell's.
Q. Didn't she leave before that?
A. She paid a visit to her granddaughter's, Mrs. Robert Tenney.
Q. When was that?
A. A very short time after the death of Miss Elouise. I have forgotten the date.
Q. Approximate it as near as you can.
A. I think it was very early in October. I am not sure of the date of Miss Elose'- death, but I know it was a short time after Miss Ellouise Campbell's death.
Q. How long did she remain at Mrs. Tenney's?
A. Well, she returned in December.
Q. You were there at Mrs. Moore's all the time?
A. Oh, yes; I was there during the family's absence; all the time.
131 Q. Did any one call upon Mrs. Mary I. Campbell during her absence at Mrs. Tenney's?
A. No; not at Mr. Moore's house.
Q. What kind of a disposition had Mrs. Mary I. Campbell?
A. Well, Mrs. Campbell had a very pleasant disposition. She had her peculiarities, like the rest of us, sometimes, but she was very pleasant and very charitable. She was always willing to help any one in need; devoted her leisure moments providing for the poor in winter.
Q. What was her condition mentally?
A. Well, Mrs. Campbell was a lady of sound mind, and one that could not be influenced.
Q. What do you mean by influenced?
A. She could not be persuaded to do anything she did not want to do; she had a will of her own.
Q. How was her health while you were there?
A. Well, she was a very old lady, and sometimes she had her

feeble spells. She would fall weak for, maybe, a couple of days, and then she would get all right again. She was very bright.

Q. Did she or not have remarkably good health for a lady of her age?

A. Yes, sir; remarkably good health.

Cross-examination.

By Mr. CLAUGHTON:

Q. You stated that Mrs. Campbell spoke kindly of Mr. Moore. When and where was that?

A. She always thought kindly of Mr. Moore.

Q. That is rather indefinite. Give any particular time
132 and occasion.

A. No. Whenever she called Mr. Moore's name it was always in the kindest manner. She spoke particularly of his being very charitable and pleasant in his home to everybody.

Q. Upon what occasion did you hear her speak of him that way to you?

A. Well, it is on different occasions. I do not think it was any particular occasion. In fact, she always spoke of him in that way.

Q. Why should she speak about it to you at all? You were not a member of the family.

A. It was generally in this way: Mr. Moore was interested in the Associated Charities, and she used to always say, "What a good man Frederick is; if we only had a few more like Frederick, how much better off the poor would be." Something in that way.

Q. Is that what you mean by saying she spoke kindly of Mr. Moore?

A. Well, that is the particular occasion she spoke to me. In fact, she always spoke of him that way in the home and in the family.

Q. Still I do not get an answer to my question. What reason had Mrs. Campbell to speak to you about Mr. Moore at all?

A. Well, she would always—what reason she had? I do not know what particular reason she had; she simply wished to have something to say.

Q. Was she very garrulous?

A. She was of a very pleasant disposition.

133 Q. Garrulous people are not always pleasant, Mrs. Courtney. Was she so very garrulous—talkative?

A. Yes; she was.

Q. Did you talk to her when she was discussing Mr. Moore?

A. I answered her when she asked me any questions. I would only say this: Mr. Moore is very kind. That is about all I would say.

Q. What do you know about this kindness?

A. Well, Mr. Moore was a very particularly kind gentleman in his home. I have the first time to hear him speak an unkind word to a servant in his house.

Q. You are speaking of him in his domestic relations?
A. Yes, sir.
Q. You speak of Mrs. Campbell having been very charitable.
A. Yes, sir.
Q. Do you know of any particular instance of her charity?
A. Well, I do not remember of institutions. I know she was always ready and willing to do for the poor people that were around in the neighborhood or she knew were suffering. She would go to them and send to them.
Q. Do you know of any such person?
A. Well, I knew where they lived then. I could not call their names.
Q. Where did they live?
A. Lived on Valley street, back of the residence.
Q. Were they white or colored people?
A. They were white people.
134 Q. Did you ever see them?
A. Yes. I went there on one or two occasions and took packages for Mrs. Campbell.
Q. Just tell what the packages were.
A. Well, she would make clothing—children's clothing—and she would buy bread for them.
Q. What packages did you take?
A. I took bread. On one occasion I took bread, and on another occasion I took children's clothing.
Q. How many?
A. I do not know exactly how many. I recollect that I took the bundle.
Q. What was the value?
A. Nothing very expensive.
Q. You speak of her in her leisure moments talking about charities. Were not all of her moments leisure?
A. Well, when she had nothing else to do she was talking about the poor and doing for the poor in her room.
Q. Have you given all the instances that you know of in which she was charitable?
A. All that I know of.
Q. Mrs. Campbell was very deaf, was she?
A. Yes.

MARGARET COURTNEY.

Subscribed by the examiner with the consent of counsel on both sides, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Dr. ARMISTEAD PETER, a witness on behalf of the defence, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. How old are you?
A. Fifty-six years.
Q. What is your residence?
A. No. 3044 O street N. W., Washington, D. C.
Q. Did you ever attend Mr. and Mrs. H. Campbell? What years, about, did your visits extend over?
A. 1881 to 1885 and 1891 to 1893.
Q. I want you to state, Doctor, from your visits to the family there, what you observed as to the condition of Mrs. Campbell, mentally and physically, and whether you observed also the relationship that existed in the family—were they friendly or unpleasant between the Moores and Mrs. Campbell—and whether you made any visits there not professional—not as a physician, but friendly.
A. Mrs. Campbell was perfectly well, mentally and physically, and her family were always very friendly and good to her.
Q. About how many times were you called in to attend her for sickness?
A. Not very often. Several times during 1881 and 1882 and several times during '91 and '92.
Q. Have you any idea of the number of visits altogether you made?
A. I suppose about fourteen or fifteen.
Q. How did you find her mentally, always?
A. Perfectly sound; perfectly well mentally.
136 Q. What impression did she give you as to her character, mentally?
A. I always found her perfectly qualified to transact any business and answer any question I put to her.
Q. How was her will power?
A. She had a very strong will power.
Q. What about her disposition, whether it was bright and happy?
A. Always bright and happy when I was with her.
Q. How long was she sick in her last illness?
A. About three days.
Q. Do you know how much of that time she was in bed?
A. I think from Friday morning until she died, Sunday.
Q. During those three last days how was her mind?
A. She was perfectly unconscious.
Q. What was the trouble, Doctor?
A. She had brain paralysis.
Q. That is what she died of?
A. Hemorrhage of the brain.

Q. Was that the only occasion you saw her after her return from Philadelphia?

A. I met her very often in the house when I visited Mr. Moore's family.

Q. Do you mean after her return from Philadelphia?

A. In '91; yes.

Q. Where did you see her.

A. At Mr. Moore's house.

Q. What part of the house?

A. In her room, generally.

137 Q. What was the occasion of your going to her room when you paid a visit to Mr. Moore?

A. I used to go into the room very often. Sometimes I was asked to go up to see her.

Q. Can you approximate how often you went to her room by invitation?

A. You mean professionally or unprofessionally?

Q. Either.

A. I visited her professionally in the month of June, 1893.

Q. When did she die?

A. Died in August, 1893.

Q. How long did she live after she came back from Philadelphia?

A. She came back in 1891 and died in 1893.

Cross-examination.

By Mr. CLAUGHTON:

Q. You speak of her having exhibited great will power?

A. She had a very decided will power.

Q. State what occasion you had for observing that.

A. No special occasion, except by her general conversation.

Q. Then I understand that your conclusion in respect to her will power were derived entirely from her ordinary conversation?

A. Yes, sir.

Q. Did you get that from the emphasis with which she spoke?

A. Oh, no; her general manner.

138 Q. Do you remember any particular expression of that general manner that struck you at the time?

A. No.

Q. I do not know whether I asked you how many times you saw her professionally after she came back from Philadelphia?

A. In the year '93, I saw her about eight times.

Q. Was that in her last sickness?

A. I saw her three times in her last sickness.

Q. What was the occasion of the other times, Doctor?

A. I do not remember what was the matter with her in the middle of the summer, in the month of June.

Q. Was she confined to her bed when you called?

A. She was in her room; don't know whether she was in her bed or not.

Q. Had — any particular occasion to observe in respect to her mental condition, Doctor, when you paid those visits?
A. Always talked very clearly and expressed herself very well.
Q. My question was, had you any particular reason for giving particular attention to that?
A. No.

Redirect.

By Mr. CRAGIN:

Q. Do you know her disposition as to charitable objects?

(Objected to by Mr. Claughton, as not brought out by his cross-examination.)

A. Seemed almost to be a mania with her to give to charity.

By Mr. CLAUGHTON:

Q. From what do you form that conclusion that it was a
139 mania with her?
A. I do not call it mania or any form of insanity. She had this idea, that she ought to give away her money to charitable objects—all her income. I do not mean that word for anything like insanity.
Q. She talked to you about giving all her income to charitable objects?
A. Yes.
Q. How often?
A. I do not know.
Q. Very often?
A. General conversation. Once in a while, not more than any ordinary person would do.
Q. Did she name any of these charitable objects?
A. Yes.

ARMISTEAD PETER.

Subscribed by agreement between counsel on both sides by the examiner, the witness having been first duly sworn before giving his testimony to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

140 *Mrs. Carrie Carlisle.*

Mrs. CARRIE CARLISLE, a witness on behalf of the defence, sworn and examined.

By Mr. CRAGIN:

Q. State your age, name, and residence.
A. Age, thirty-seven; residence, 1207 Prince street, Alexandria, Va.
Q. Where were you from July, '92, to August, '93?

A. I was with Mrs. William H. Campbell at Mr. Moore's.

Q. Will you be kind enough to state, in your own way, what occurred there, friendly or unpleasant, in the relations existing between Mr. and Mrs. Moore and Mrs. Campbell, which came under your observation, or that you heard or saw while you were there, generally?

(Mr. Claughton objects to this question as irrelevant and too general.)

A. Everything was very pleasant between them; never heard of a cross word between any of the family. Mrs. Campbell was perfectly devoted to the Moore family, and Mr. Moore was thought as dearly of as she did her own son. She always called him her dear son, and whenever she would see Mr. Moore passing into the sitting-room she would say, "God bless that dear boy;" and Mrs. Moore and Miss Ella both were perfectly devoted to Mrs. Campbell and she to them. They did all they could to make it as pleasant as possible, and she was perfectly happy. During Mrs. Campbell's first sickness, after I went there, if Mr. Moore did not come in before he went out of a morning Mrs. Campbell would remark to me, "Is Mr. Moore gone yet?" I would tell her no, and I would ask her
141 if she would like to see Mr. Moore. Her remark was, "No; he will be in before he goes out." So he would come in as she expected, ask her how she was, and sit and talk with her a while, and then would leave, bidding her an affectionate good-bye.

Q. How was it at night?

A. At night Mrs. Moore—after dinner Mrs. Moore would come in and ask Mrs. Campbell if she would not like to go into the sitting-room and spend the evening with them, and she would then go and sit in there until bedtime. Then she would bid them all good night. Mr. Moore would offer to assist her to the room in bidding her good night, and then after she retired Miss Ella and Mrs. Moore would come in and kiss Mrs. Campbell good night, and generally when I would always take the meals up to Mrs. Campbell Miss Ella and Mrs. Moore would come and see if she had everything that would be a nice meal for her, and if not, why they would make arrangements to have something else prepared for her more suitable.

Q. What was her physical and mental condition when you first went there, and how did she continue up to her last illness?

A. Splendid. Her mind was as perfect and cheerful as could be.

Q. How long was she sick in her last illness?

A. Only three days.

Q. Do you remember of any one calling there while you were waiting on Mrs. Campbell during that period?

A. Yes, sir; she had several callers. A Mrs. Mary K. Campbell called several times, and in one instance she remarked to Mrs.
142 Campbell about her financial affairs; said that she had a good deal of trouble in that respect, and Mrs. Campbell then

remarked to me—asked me if I would give her her money-box, which I did and then left the room.

Q. What took place afterwards, if anything, when you returned?

A. When I returned after Mrs. Mary K. Campbell left the room?

Q. Did you give her her money-box?

A. I gave her the money-box, and then I left the room.

Q. What took place upon your return?

A. When I went back Mrs. William H. Campbell remarked to me, "Why did you leave the room?" and I said, "Just for a simple matter," and she says, "You cannot fool me. I can see through a millstone when it has a hole in it."

Q. Did you ever find any one listening at the doors there at Mrs. Moore's?

A. No, sir; never. Whenever Mrs. Campbell had company I always left the room, but she would remark upon my returning, why did I leave the room. I told — I thought I ought to leave. Probably there was a little confidential matter she would like to have with her friends. She said no; there was no occasion for me to leave, as there were no secrets.

Cross-examination.

By Mr. CLAUGHTON:

Q. What time did you go to Mrs. Campbell's to take care of her?

A. The latter part of July—the 27th of July.

Q. What year?

A. 1892.

143 Q. You went after Mrs. Courtney left?

A. I do not know. There was a nurse from Philadelphia came on with her from Philadelphia, with Mrs. Campbell, and she left that morning that I went there, and her name was Miss Jennie.

Q. Did you see that nurse?

A. No, sir; I did not see her.

Q. But about that nurse you heard from somebody else—you never saw that nurse?

A. No, sir; I did not see her because Mrs. Moore said she had left that morning, and she left about an hour before I got to Mrs. Moore's.

Q. Mrs. Moore told you that?

A. Yes, sir.

Q. What were your duties?

A. My duties were principally to wait upon Mrs. Campbell.

Q. Did she require a nurse?

A. She was a little feeble, and she would rather have somebody wait on her all the time.

Q. She did require a nurse, then?

A. Yes, sir.

Q. She had a trained nurse?

A. Well, she had a trained nurse.

Q. When she left you took her place?

A. Yes, sir.

Q. Be a little more explicit as to what your services were.

A. Oh, I did whatever Mrs. Campbell said; waited on her and helped her with the toilet of the morning and night, and got
144 her ready for bed; did a little mending, things of that sort—darning; attended to her room.

Q. How long were you there?

A. I was there a little over a year, and I was there up until the time of Mrs. Campbell's death, in August?

Q. During that year, how often did Mrs. Campbell go down in the sitting-room?

A. Well, the sitting-room was right next to Mrs. Campbell's bedroom, and she could go right from her room into the sitting-room.

Q. Whose sitting-room was it?

A. Mrs. Moore's.

Q. Was it a matter of daily occurrence, these expressions of kindness and affection upon Mrs. Campbell's part toward Mr. and Mrs. Moore?

A. Every day; it was a very common occurrence.

Q. You mean to say, every morning she asked you if Mr. Moore was gone?

A. Yes, sir; she did.

Q. And every morning he was not gone?

A. No, sir; he was not gone.

Q. Did he never go without bidding Mrs. Campbell good-bye?

A. He would never go without bidding Mrs. Campbell good-bye.

Q. Will you please state if that was his *such* usual custom?

A. Yes, sir; it was Mr. Moore's general way. Mrs. Campbell asked if he was gone.

Q. Then, why did Mrs. Campbell ask if he was gone when she knew that he never went without coming to see her?

145 A. Probably it was Mr. Moore had rode away, although he never did; nevertheless she would ask. Then she would remark, I knew he was not gone, because he would come into the room to bid me good-bye.

Q. Then, I understand you to say that, although Mr. Moore during that year never went out in the morning without going in to see Mrs. Campbell, yet she every morning asked you if Mr. Moore had gone?

A. Yes, sir.

Q. And then when he came in she would say every morning, I knew he would not go out without coming in to see me?

A. Yes, sir.

Q. And then, immediately upon Mr. Moore's leaving the room, she would say, "God bless that dear boy. He has been a good son to me," and she said that every morning?

A. Every morning.

Q. How long was Mrs. Campbell confined to her bed before her death?

A. Her last illness, three days; and the night before—Thursday night—before she was taken sick, she remarked to us about Miss

Ella, saying, God bless her, remarking, that dear child will be home tomorrow night.

Q. How many years ago has it been now since these declarations on the part of Mrs. Campbell took place?

A. It has been now since about four years; I quit four years ago.

Q. It is not unreasonable to ask you how it is you happen to remember all these little things after such a long period of time?

146 A. Because I was so deeply attached to her myself. I was there a little over a year, nursing her, and I was very fond of Mrs. Campbell, and I would notice so many of these little things and expressions.

Q. If she was so constantly and daily making use of these expressions, why should they constantly arrest your attention and fix themselves in your memory?

A. Because I could not help noticing her deep affection for the family. She was perfectly devoted to them, and they to her.

Q. Was it such a very remarkable thing for a mother and daughter to be devoted to each other that you had to take notice of it?

A. It was perfectly natural, but they were so devoted.

Q. You mean to say they were more devoted than any other mother and daughter you saw?

A. Very rarely you see more.

Q. I understand the reason why these expressions of affection attracted your attention at the time and have remained so perfectly in your memory since was the extraordinary devotion between mother and daughter?

A. She had such a loving disposition, and they to her, that it was perfectly natural for her to make these expressions, because she was so grateful for all the kindness shown her.

Q. Can you tell me why a mother who was herself kind and loving should be so much exercised with gratitude because her daughter was kind to her?

A. She was very grateful for all their kindness and it was perfectly natural she should be.

147 Q. Perhaps you and I have very different ideas about gratitude.

A. I think that you feel grateful; if you feel a great deal of gratitude it should be expressed, especially to one who had been a constant companion to her for a long time.

Q. Do you mean to say that it is a natural and usual thing for a parent and her daughter and her child to be continually expressing their gratitude to each other?

A. I think it is perfectly natural.

Q. Did you ever see anybody but Mrs. Campbell do it?

A. No, sir; I cannot say that I have.

Q. You think she was an exception in that matter?

A. She was an exception to the general rule.

Q. Then it was not so natural, as it is not the general rule. It is not so natural, then, if it is not the general rule?

A. You rarely hear of persons being so devoted as that family

were. I have been around to several families, and I have not seen such devotion.

Q. Will you tell me whether or not, until the time you were asked to be a witness here, if you had ever expressed that opinion of the wonderful affection and devotion of this family to each other to any human being?

A. Wherever I have been since I have always remarked how loving there were; never a cross word spoken.

Q. Now, I am going to get you down to particulars where you were since. Name one place.

A. I was nursing at Judge Bentley's, on 9th street.

Q. Is he here now?

A. In the city?

148 Q. You said you never had seen such devotion in Judge Bentley's. What member of the family did you say that to?

A. I said that to Mrs. Bentley.

Q. Who else?

A. Mrs. Sadie Garner.

Q. Who else?

A. I also made the same remark to Mrs. Bates, in Georgetown.

Q. What Mrs. Bates is that; where does she live; what is her name?

A. She lives on 30th street.

Q. Between what streets?

A. It is near Dunbarton street.

Q. State what you said to her.

A. I remarked of the devotion to Mrs. Campbell in the Moore family; how peaceful. She never got a cross word the whole time I was there, from any one in the family.

Q. Now, anybody else?

A. And they were always cheerful and pleasant to every one, and especially to Mrs. William H. Campbell.

Q. Now, will you state anybody else you expressed that opinion to?

A. At home I have often spoken of it.

Q. Are they the only persons with whom you nursed—these two persons?

A. Yes, sir.

Q. What do you mean by at home?

A. Well, when I am at home I make my home in Alexandria.

Q. With whom?

A. With my cousin, Mrs. Nelson.

Q. What is her name?

149 A. Her name is Mrs. Thomas H. Nelson.

Q. State what you said to Mrs. Thomas H. Nelson on this subject.

A. I often remarked that Mrs. Campbell had a perfect disposition, and also how devoted she was to Mr. and Mrs. Moore and Miss Ella and they to Mrs. Campbell.

Q. How often did you say that to Mrs. Nelson?

A. I cannot exactly remember the number of times because I have spoken of it so often.

Q. What was the occasion of your saying anything to Mrs. Nelson about it?

A. Because I was very fond of her; never got tired of talking about her.

Q. Then you reiterated this continually because it was very pleasant to you to say and very agreeable for Mrs. Nelson to hear?

A. Yes, sir.

Q. When were you asked—called upon—to be a witness in this case?

A. Just about a week ago.

Q. Who came to see you—who called upon you?

A. Why Mr. Cragin called on me; asked if I knew of any statement to that effect, and I told him that I was in the family; if there was anything I could do I would do so.

Q. Any statement to what effect?

A. He asked me if I would object to coming here, and if I had anything to say in regards to Mrs. Campbell would I do so?

Q. Yes; and what did you say?

A. I told him I would and be glad to do so.

150 Q. Did you state what you would say?

A. No, sir; not everything. I have said more today.

Q. Did not make quite so long speeches as here today?

A. No, sir.

Q. Have you seen any one else?

A. I have seen Mrs. Moore since, but nothing was said upon this business.

Q. You and Mrs. Moore have not talked about it at all??

A. No, sir.

Q. Did you and she talk about it?

A. No, sir.

Q. Did you talk about your being called as a witness?

A. No, sir. I said to her that Mr. Cragin had called upon me, and I was to appear here as a witness, but she did not ask me what I knew, nor nothing about it.

Q. But you did not tell her?

A. No, sir.

Q. Nothing in the world to you but that Mr. Cragin wanted you to be a witness?

A. No, sir.

Q. Never told her how kind the family had been to each other?

A. No, sir.

Q. Did you see anybody else besides Mrs. Moore?

A. Well, I saw Miss Ella and Mr. Moore, but nothing of that kind passed between us; nothing but to say good morning and how do.

Q. Then you came here without their knowing what you were going to testify to?

A. Yes, sir.

CARRIE CARLISLE.

151 Subscribed by the examiner by agreement of counsel on both sides, the witness having duly sworn in accordance with law to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Thomas Janney Brown, 1603 30*th Street N. W.*

Mr. THOMAS JANNEY BROWN, a witness on behalf of the defence, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. Did you know Mrs. Mary I. Campbell?
A. Yes, sir.
Q. Intimately?
A. As intimately as one could know her who visited the house as frequently as I did.
Q. How frequently did you visit the house?
A. I reckon there was hardly a week went by during Mrs. Campbell's last year of her life.
Q. Did you talk with her?
A. Yes, sir.
Q. State, from your observation of her and your conversation with her, what opinion you formed as to her mental and physical condition and disposition.

(Exception noted by Judge Claughton on account of irrelevancy.)

152 A. In my conversation with her she was very interesting; dwelt very particularly on things of the past age, in which we are not so very much interested, not having lived in the past; and her mind was very clear, and she was very interesting and entertaining. There was nothing that one could possibly discover about her mind that was in anyways weak or impaired.
Q. How was she physically?
A. She was as well preserved at that age as anybody I have ever had the pleasure of knowing.
Q. You say you called there once or twice a week during a year and a half?
A. I am very fond of whist, and so is the family, and I always like to go there and play whist, and frequently did.
Q. Do you recall any incidents that took place during any of your visits that impressed themselves upon your mind, coming from Mrs. Campbell?
A. Mrs. Campbell very frequently came into the sitting-room during the first part of the evening, when we were sitting there talking. Sometimes she suspected we would like to get to whist. I don't think she liked cards very much, so she would leave; but I remember she was not averse exactly to our playing, but she sometimes acted in this way. She used to say, "When you divide the

spoils"—I remember this, because I thought it was very bright—"don't forget the widow." Then she left, and we began our playing, as we nearly always did.

Q. Had you an opportunity to observe the relationship that existed between Mrs. Campbell and Mrs. and Mr. Moore during that period?

A. Yes, sir.

153 Q. Was it friendly or otherwise?

A. I have never been in a household that was as lovely in my life, and I never went away from there without feeling that I had gained something by my visit. I never visited a house where there was any lov-er temperament or atmosphere than there was in that house between the family themselves and Mrs. Campbell. She was one of the family, really, and one of the most beloved members of the family. They showed her every attention and were perfectly devoted to her, as she evinced by her words and actions.

Q. How did she appear towards them?

A. She appeared to love them all devotedly, and would frequently show so by her marks of appreciation of their kindness. One could not have easily been in the family like I have been without imbibing it, without observing how close a relationship existed. Without giving every word or detail of conversation which might have passed, one can easily form a conclusion that there was the most lovely feeling existing among the family, especially with her. They treated her in the most tender way; every one loved her. There was nothing disagreeable about her. Any one would enjoy sitting down talking with her, because she was very interesting and, as I said, very bright. True, she dwelt on the past a great deal; that is natural to her age. Those things seemed more perfect and clear to her than probably the things of our day. She used to entertain me sometimes about things of the past—war—and I presume she preferred those things, and did frequently tell me about them.

Q. How did she impress you then as a women preserved mentally?

154 A. I think I said her mental abilities seemed to be beyond the average of that age, and as to her physical condition she was as well preserved as anybody I have met at that age. Very bright and very witty; generally interesting. I do not know of any particular conversation, save the things of the past.

Q. How did she impress you as to her will power?

A. She had sufficient will power for one of twice her size. She was a very small woman, but she had abundant will power, and she was very decided in her opinions.

Cross-examination.

By Mr. CLAUGHTON:

Q. With whom did you play whist?

A. Mr. and Mrs. Moore and Miss Ella Moore and myself, gener-

ally, when they were alone at home. When outside friends would come in, then we played six-handed euchre.

Q. Well, Mrs. Moore and Mr. Moore and Miss Ella Moore and yourself?

A. Yes, sir; didn't always play whist; sometimes talked.

Q. Mrs. Campbell never took a hand?

A. No, sir.

Q. But she knew all about the widow, did she?

A. Yes, sir.

Q. How frequently was it Mrs. Campbell sat in the room while you were there?

A. I cannot tell you, sir; I do not know that exactly, but I should say probably half the time.

155 Q. Now, one more impertinent question—how often did you go there?

A. Well, that is rather an impertinent question, I must say, but I said once a week and probably twice a week—I never go too often—and still go.

Q. You have spoken of the entertaining conversation of Mrs. Campbell—how affectionate she was; reciprocation on the part of the others. That was all very natural, wasn't it?

A. Why, yes.

Q. You have spoken also of her will power—how did she exhibit that?

A. Well, once in a while we would have little discussions about something; she would take a decided point, decided stand, and generally held to it.

Q. You remember any of those questions you discussed?

A. No; I cannot say I remember. It is a general impression, you know. You can get it in a way you cannot explain, and it is a general impression.

Q. Generally impressed by our surroundings—by our feelings as much as——

A. More or less.

Q. Don't claim to be at all exempt from them?

A. No.

THOMAS JANNEY BROWN.

Subscribed by the examiner by agreement of counsel, the witness having duly affirmed in accordance with law to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

156 *Sarah J. Reeder.*

SARAH J. REEDER, a witness on behalf of the defence, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. How old are you?

A. About fifty-nine.

Q. Where do you reside?

A. 1671 Valley street.

Q. You lived, as I understand, at the residence of Mr. and Mrs. Moore for some years as cook?

A. I have lived with them and around them ever since the fifties. I have not lived there all the time, but I have been around there working all the time ever since the fifties.

Q. Were you working for them at the time Mrs. Mary I. Campbell lived with them?

A. Yes, sir; during all that time, but I was not cook, I was washing for her. I washed for her all the time.

Q. You washed for Mrs. Mary I. Campbell?

A. Yes, sir.

Q. Did you have an opportunity to judge of the relationship that existed between Mr. and Mrs. Moore and Mrs. Mary I. Campbell?

A. Yes, sir.

Q. State what that was, whether pleasant or disagreeable.

A. It was pleasant always.

Q. Did you ever hear of anything unkind?

A. No, sir.

Q. Anything disagreeable in any way?

A. No, sir; I could find out a great deal, because I was always close, and I was there all the time.

157 Q. What kind of a woman was Mrs. Campbell?

A. Pleasant, agreeable.

Q. How was she mentally and physically?

(Question objected to by Judge Claughton as incompetent.)

A. Her mind was good. Physically she was as well as could be for a lady of her age. Her mind was perfect enough.

Q. You know about the meals being taken to her rooms?

A. Yes, sir; I cooked her extra breakfast for her every morning.

Q. Who took that to her?

A. Sometimes Miss Courtney and myself; Miss Allen when she was working there, and also Mrs. Carlisle.

Q. Did Mrs. Campbell ever express to you anything pleasant or disagreeable about the Moores, about their treatment of her?

A. No, sir; never said anything disagreeable about them.

Q. Anything pleasant?

A. I suppose she has. I do not remember everything that was said.

Q. Were you there at the time of her death?

A. Yes, sir; I helped to lay her out.

Q. Were you there at the time of the death of Miss Eloise?

A. Yes, sir.

Q. William H. Campbell?

A. Yes, sir.

Q. What kind of rooms were these she had there at the house, in the third story?

A. Very nice room; about the nicest room in the house; dressing-room and bath-room; large room.

158 Q. And bed-room?

A. Yes, sir; Mrs. Campbell's bed-room, dressing-room, and bath-room.

No cross-examination.

SARAH J. REEDER.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Amy Ella Blanchard.

AMY ELLA BLANCHARD, a witness on behalf of the defence, being duly sworn by the examiner, deposed as follows:

By Mr. CRAGIN:

Q. Please state your name, age, and residence.

A. Amy Ella Blanchard; age, 41; residence, 4100 Pine street, Philadelphia, Pa.

Q. Did you know the late Mrs. Mary I. Campbell?

A. I knew her very well.

Q. Did you visit at the residence of Mrs. Moore in Georgetown when she was there at any time?

A. I did, I think, during the entire period of her being there. I made quite long visits at intervals.

Q. How long were you there generally at a time?

A. Two or three weeks.

Q. Were you present when Mrs. Campbell died?

159 A. I was. I was with her when she died. I sat up.

Q. Did you see or not see her at any time in Philadelphia?

A. Yes, sir. I called upon her very often at Mrs. Russell's.

Q. Be kind enough to state what you observed from your visits to the Moores, and at Philadelphia, at the Russells', as to her mental and physical condition, and how she lived at the house of Mr. and Mrs. Moore and the Russells'; the relationship that existed between these people at the time, whether pleasant or otherwise, and any incident you recall showing that relationship, by expressions from Mrs. Campbell.

A. She was an unusually well-preserved person, of remarkably clear mind—a person of a great deal of determination and decision—and the relations between the families on both cases—both of Mrs. Russell's and Mrs. Moore's—I always found to be very pleasant in every possible way. She always had the most comfortable room that could be gotten for her at Mrs. Moore's. Miss Ella Moore gave up her room to her during Mrs. Campbell's first stay there. She did this as a sacrifice, because it was a room she was very fond of, and knowing Mrs. Campbell preferred it she gave it up to her during her stay, and when Mrs. Campbell returned she took a room on

the second floor, that she might be a little more accessible, also a very pleasant room. She also had the use of the sitting-room, which opened immediately out of her own room, and went from one room to the other, and it was thought she was very comfortably situated, and her expressions of affection I suppose were unusual, because I think old people are frequently neglected, not because people wish to be unkind to them, but because, I think, they think they require less care than they do and less attention, and it is always appreciated by old people, because they seldom get it, and at Mr. Moore's, I think, she was the central figure of the house, around which every thought circled. She was the object of attention of the household. I think she was thought of every day, and they tried to think of some pleasant thing for her entertainment during the day. I remember on one occasion, on the Fourth of July, Mr. Tenney brought up the fireworks from his house, and Mrs. Campbell was carried downstairs, placed in the bay-window, in order that she might see the fireworks, which she enjoyed immensely, and she told me the next day—she kept referring to it—said she did not know when she had such a delightful Fourth of July, and her devotion to every member of family was marked. I recollect Miss Ella Moore went to the World's Fair. She counted the days until she returned. Each morning she would say, How many days will it be before Ella comes back? Then I would tell her, and she would say, I hope the dear child is having a good time and I would be so glad to see her.

160

Q. Do you recall any incident showing affection particularly towards Mr. and Mrs. Moore?

A. She has more than once spoken to me of her affection for Mr. Moore, and I know of one occasion that Mr. Moore had been in the room and had bid her good morning or good night, she said, "What a good, good man that is. I am so thankful for such a son;" and I went to see her at Mrs. Russell's, her family, of course, being mutual friends—mutually interested in the family—she would speak of them all with the utmost affection when she had heard from them—how interested she was in their affairs, and so on.

161

Q. Anything else that you recall, pleasant or otherwise, showing her interest in the families of Mr. Russell and Mr. Moore while Mrs. Campbell lived with them?

(Question excepted — by Mr. Claughton because the general question has already been asked and answered.)

A. Know of nothing else, except that some pleasant employment was always provided for her, if possible, because for a person, an old woman, it is very hard to find something to entertain her, and I know Miss Ella, when she went out, would always hunt up some little thing to entertain her or amuse her—some little piece of fancy-work or something of that kind. She was always in the mind of some member of the family.

Q. Do you know anything about her feelings towards charitable objects?

A. She was very much interested in that. I only know of that

through her conversation on such subjects. She used to read the papers, and especially religious papers—New York Observer and others—and anything in the way of charity she would always speak of to me. She would say, Have you heard of such and such a case. I am so interested in such and such a case—some poor minister, or some case of some disaster, some town, or anything of that kind. She would mention it in that way. Her interest—general interest—I think, was very great in charities.

Q. I neglected to ask you, when I asked your name, whether you are a writer?

A. I am; that is my profession.

Q. How many books have you written?

A. I suppose a dozen or more—something like that.

Q. Do you edit any paper?

162 (This question is excepted — by Judge Claughton as irrelevant and incompetent.)

A. I was editor of the home department of the Church Standard for a year.

Cross examination.

By Mr. CLAUGHTON:

Q. Do I understand you to say you were a frequent visitor at the home of Mr. Moore before Mrs. Campbell went to Philadelphia?

A. Yes.

Q. And you were there during the lifetime of Miss Eloise Campbell?

A. Yes; once or twice while she was there I was in the house.

Q. You spoke about how beautiful and delightful the home was?

A. Yes, sir.

Q. Did it ever occur to you to be at all strange that she could tear herself away from such delightful surroundings?

A. I think she wanted to see her other daughter. I think it was quite natural she wanted to visit her other daughter.

Q. Well, where were you when she left to go to Philadelphia?

A. I think I may have been in New York.

Q. How long prior to that was it that you had last been to Mr. Moore's?

A. I was there about two weeks after Miss Eloise died.

Q. How long did you stay?

A. I think about two weeks at that time, as near as I can
163 recollect.

Q. Hav-n't any doubt about those dates?

A. I am confident I was there. I went there between the 10th and 15th of October, 1885.

Q. Are you equally confident you stayed two weeks?

A. I am confident because on account of a wedding that occurred on the 24th. I think I must have been there. I know I was there until that time.

Q. Know how long Mrs. Campbell was in Philadelphia?

A. She was there, I think, about five years. I was not there all the time, in Philadelphia; I passed through it.

Q. Do you recollect when she came back?

A. Yes.

Q. Where were you then?

A. I was then in Plainfield, N. J., I think—no; I was in Philadelphia.

Q. How often did you see Mrs. Campbell in Russell's?

A. I suppose I went to see her once in every few weeks.

Q. Every few weeks?

A. Yes; two or sometimes three weeks—once a month.

Q. During the five years?

A. Yes.

Q. Converse with her freely?

A. Yes; she was not a person—I say freely—although a very affable woman, she was rather a reserved woman.

Q. Did she tell you about her purpose of returning to Georgetown?

A. Not that I remember. She had been very ill previous to that time, and I did not see her for some time.

Q. Ever know of her making any charitable gifts?

A. Yes; she told me of having sent some gifts—I do not
164 know the value of it—to the family of some poor minister in Philadelphia at that time. As I say, she was rather reserved about her affairs. Her conversation was usually on other matters.

Q. That is the only one you remember?

A. I remember of her speaking of that.

Q. You do not know the amount?

A. I do not know the amount.

Q. She was a very diminutive person?

A. Yes, sir; exceedingly so.

Q. Hearing very much impaired?

A. Yes, sir; quite so; so much so that one had to raise one's voice to speak to her.

Q. When you visited her in Philadelphia did you see her in the general sitting-room of the house or in her own room.

A. I usually saw her in her own room. Once or twice I saw her in the library.

Redirect:

Q. How long did you remain at Mrs. Moore's after the death of Miss Eloise Campbell?

A. About two weeks after, I think.

Q. Do you know when Mrs. Mary I. Campbell left Mrs. Moore's?

A. She was not at Mrs. Moore's when I got there. I do not know when she left.

Q. She had already gone?

A. She was not at the house during my visit at that time.

Q. You came there when?

165 A. I came between the 10th and 15th of October. It fol-

lowed Miss Eloise'- death. She died the first of October, as I recollect, and it was between the 10th and 15th I came.

Q. Mrs. Campbell was not there?

A. No, sir; she was at Mrs. Tenney's, her granddaughter's, in Georgetown.

Q. If I understand you, she did not return to the Moores' any time while you were there?

A. Not while I was there.

AMY ELLA BLANCHARD.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

WEDNESDAY, *Nov.* 11, 1896—12 o'clock.

Met pursuant to adjournment.

Present: Mr. Claughton, on behalf of the complainants, and Mr. Cragin, on behalf of the defendants Russell and Moore.

Annie Amelia Allen.

ANNIE AMELIA ALLEN, a witness on behalf of the defendants, of lawful age, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. State your name and residence.

166 A. My name is Annie Amelia Allen and my residence is 3421 Q street N. W.

Q. When did you go to live at Mrs. Tenney's house?

A. Four years ago.

Q. What time?

A. I think it was the second of February that we moved in there.

Q. What year?

A. Well, it was 1892.

Q. Now, were you living there previously to that?

A. No.

Q. At Tenney's?

A. No. I was only—no; I was not living there. I lived on Q street. I was married before I went there. I only lived at Mrs. Tenney's four months.

Q. When was that?

A. I went there October 19th, 1885, and stayed there until February 19th, 1886.

Q. You went there on October the 19th, 1885, and was Mrs. Mary I. Campbell there?

A. Yes.

Q. How long had she been there when you reached there?

A. I could not say, but she was already there.

Q. And stayed there how long?
A. Until December.
Q. About what time in December?
A. About the middle of December.
Q. How do you know it was about the middle of December?
A. Well, she stayed until Mrs. Moore came home to go back.
Q. Where did she go from Tenney's?
167 A. Went back to Mrs. Moore's.

Cross-examination:

Q. Where was Mrs. Moore?
A. At her home, 1680 31st street.
Q. Where was Mrs. Moore while Mrs. Campbell was at Mrs. Tenney's?
A. I think she was in New York.
Q. How long was she in New York?
A. I do not know; she was away when I went to Mrs. Tenney's.
Q. That was at what time?
A. 19th of October, 1885.
Q. Mrs. Moore was not at home then?
A. No.
Q. And you found Mrs. Mary I. Campbell at Mrs. Tenney's?
A. Yes.
Q. When did you leave Mrs. Tenney's?
A. I left there the 19th of February, 1886.
Q. Did you leave Mrs. Campbell there?
A. No.
Q. Can you tell when Mrs. Campbell left Mrs. Tenney's and returned to Mrs. Moore's?
A. Well, it was about the middle of December.
Q. What year?
A. 1885.
Q. Do you know whether Mrs. Moore had returned to her at that time or not?
A. Yes; she came back.
Q. Do you know how long she had been back before Mrs. Moore returned to Washington?
A. It was about a day.
168 Q. How do you fix those dates, Mrs. Allen?
A. Just I remember them. I remember when Mrs. Campbell went away.
Q. What was there to cause you to be so accurate about taking the dates?
A. Well, when I first went to Mrs. Tenney's I came in from Virginia. I remember that because I came in from Virginia about the middle — and I went there the following Monday, which was the 19th.
Q. Keep a diary?
A. No, sir.

Q. Keep a record of the peculiar and particular transactions of your life?

A. No, sir.

Q. Is there any particular fact that enables you to testify so distinctly that that date you have given of Mrs. Campbell's return to Mrs. Moore's was the accurate date? Is that the exact date you have given?

A. No; I could not say it is the exact date she went to Mrs. Moore's, but it was in the middle of December.

Q. What do you call the middle of December?

A. Probably the 13th or 14th or 15th; somewheres in the middle of the month; somewhere between the 12th and 16th.

Q. Now, you are quite certain she went back between the 12th and 16th of December?

A. Yes; I am quite certain it was about that time.

Q. About that time is not exactly an answer to my question. You see I have given you a margin from the 12th to the 16th. My question is, Are you quite sure, quite certain, that she returned during the 12th to the 16th?

169 A. Yes; I am quite certain of it.

Q. State any fact that makes you so certain.

A. No more than I remember that Mrs. Tenney was interested in a bazaar that was for the benefit of her Sunday school, and Mrs. Moore came back just about the time that had closed, I think, and Mrs. Campbell returned home. That was in December.

Q. Do you know the date when the bazaar closed?

A. No; I do not.

Q. Then, if you cannot give us either of these dates, how do you fix it was between the 12th and 16th? If you do not know exactly the day either of Mrs. Campbell's return and Mrs. Moore's, or the exact date at which the bazaar closed, how can you settle any time by reference?

A. Well, it was in December, and it was after the first, I know, and it lasted a week.

Q. What, a week? It continued, I think, much longer.

A. It was after the first. It was in December, because it was for the benefit of the Sunday school, and they sold Christmas gifts.

Q. Mrs. Allen, would you like to speak positively about that date at which that bazaar begun and when it closed?

A. No; I do not remember.

Q. Therefore you would not like to speak——

A. Yes.

Q. Then, if you do not know the date at which the bazaar closed, how can you, by remembering the bazaar ever begun or ever closed, fix the time that Mrs. Campbell returned to Mrs. Moore's?

A. Well, I was there the last night it closed, and I know

170 that she left afterwards.

Q. Yes; but yes; the date we are after.

A. I do not know the exact date. It was in the middle of the month.

Q. Now, if the bazaar began on the first of December, then you have that date?

A. No; I do not know that it did.

Q. What did you mean, then?

A. I could not say that is the exact date.

Q. Is not your remembrance about these dates altogether uncertain?

A. No; not about the date that I went there on, and I remember the date—I don't remember the date, but I know she left in the middle of December some time.

Q. Between the 12th and 16th? You would not be very much surprised if it was shown that she did not go between the 12th and the 16th?

A. Yes, I would, because I know that she did leave.

Q. Then you are so positive that you would be surprised if it was ascertained that there was an error in your testimony?

A. I would be.

Redirect.

By Mr. CRAGIN:

Q. You also stated that you remember she left the same day that Mrs. Moore returned from New York. Am I right or not?

A. She left the day Mrs. Moore came up to her home from New York.

171 Q. Mrs. Moore?

A. I do not know. Mrs. Campbell left that morning, and Mrs. Moore came that day.

By Mr. CLAUGHTON:

Q. How do you know Mrs. Moore came back?

A. Well, because Mr. Moore——

Q. Did you see her?

A. When did I see Mrs. Moore?

Q. Yes; when did you see her?

A. I seen her the day after she came, the day after she came home—well, Mrs. Tenney.

Q. You cannot state what anybody else told you?

A. Mr. Moore had been home about three days. After that Mrs. Moore came, because he taken his meals at Mrs. Tenney's. He came there on Sunday to his breakfast and dinner and tea, I think, and on the other days he was just there to his dinner; came down to his dinner.

Q. Then, if I understand you correctly, Mr. Moore returned before his wife?

A. Yes.

Q. You know that from the fact that he took his meals at his daughter's instead of at his home?

A. Yes.

Q. When did Mr. Moore return?

A. About three days before Mrs. Moore came home.

Q. Mrs. Moore came back three days after Mr. Moore. That is all you know about it?

A. That is all I know.

ANNIE AMELIA ALLEN.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn to tell the truth *the truth*, the
172 whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Elizabeth D. Beall.

ELIZABETH D. BEALL, a witness on behalf of the defendants, of lawful age, being duly sworn by the examiner, deposed as follows:

By Mr. CRAGIN:

Q. Where do you reside?

A. 1670 31 street N. W.

Q. How is your residence located in reference to Mrs. Moore's residence?

A. Next lot but one, and the intervening lot has no residence on it; it is a vacant lot.

Q. You are the next-door neighbor south of Mrs. Moore?

A. Yes.

Q. Who is the next-door neighbor north of Mrs. Moore?

A. Mrs. Bradley.

Q. What is her name?

A. Mary Duncan Bradley.

Q. Did you know Mrs. Mary I. Campbell?

A. Yes.

Q. Over what period of time did your acquaintance extend?

A. Well, I met Mrs. Campbell at intervals before she came to Georgetown to live. When she visited at her daughter's I
173 would frequently meet her. I frequently met her as a visitor and knew her quite well after her residence at her daughter's.

Q. Had you or not any opportunities to observe the kind of woman she was in character and her mental and physical condition?

A. Yes; ample opportunity.

Q. Will you state how she impressed you as to her mental and physical condition and what kind of character she evinced, to your mind, as to will power?

A. When I first knew her she was very active, both physically and mentally; always a woman of strong, decided character, but most affable in her manner always; very attractive old lady to me. Towards the latter part of her life she was not so active, coming up and down the hill, as at first. She walked; walked up and down the hill. Later in life she did not do that; she would use the carriage. To the last of my seeing her, she was most active in mind; a woman of most perfectly clear judgment, and not at all a person

who was undecided in any way—a strong, firm, decided character, evincing no evidence of weakness, mentally certainly, and only that of advanced years physically.

Q. As I understand you, it was only towards the latter part of her life that she used the carriage?

A. Towards the latter part of her life she did not any longer walk up and down the hill. Later in life she used her son's and daughter's carriage. At first, when she lived there, she kept her own carriage a little while; always did in Washington, I think. I know she did until she became advanced in years, and then she gave it up.

Q. How was she, particularly during the years 1885 and 1886?

174 A. That was just before she went to Mrs. Russell's. She went there in 1886. Just up to that time I don't remember that she failed in health at all or after that in any way. She was pretty much the same as she was when she first came there; perhaps not so active, but not so, undoubtedly, to a neighbor.

Q. Was she or not a woman of strong decision of character?

A. Always, as far as I know of her.

Q. Now, from your observation of her and the Moores, what did you observe in the deportment of the family towards her—how she seemed to regard them, whether affectionately or otherwise; whether there was anything unpleasant came under your observation at any time in their family relations?

A. Never, certainly, under my observation; nothing but the most constant affection and attention due to an old lady and to their grandmother and mother; and, on the contrary, I made the remark once on my own porch that Mr. Moore's voice took quite a different tone in speaking to Mrs. Campbell. There was nothing but deference and respect, which is not accorded many people of the same age. I saw nothing but deference and respect and affection always.

Q. Did she seem to be in fear of Mr. Moore at all?

A. Not at all.

Q. Did she complain ever of any ill treatment she received from Mr. or Mrs. Moore?

A. Never in my hearing or to my knowledge.

Q. Do you know whether she was a woman who gave largely to charities?

A. Yes; I think she was. I frequently heard of her being very generous to different institutions. I know nothing of in-

175 dividual instances, of course. I was not sufficiently intimate to know of individual charities as much as of general charities and institutions. I remember hearing——

By Mr. CLAUGHTON: Did she tell you?

The WITNESS: Not at all. I know nothing personally.

By Mr. CRAGIN: What was her general reputation in that respect?

Mr. CLAUGHTON: I object to the question because it is irrelevant and immaterial.

The WITNESS: She was a very benevolent woman.

Cross-examination.

By Mr. CLAUGHTON:

Q. You talked often with Mrs. Campbell?

A. Yes; but not intimately. I was the intimate friend of her daughter. She was much older than myself. My relations were only sociable and pleasant.

Q. Did you have any difficulty in making yourself heard?

A. No; for, fortunately or unfortunately, I have a loud voice.

Q. Did you raise your voice at all?

A. No. I always spoke directly to her. I turned my head towards her whenever I had anything to say.

Q. I asked that question because some of the witnesses said she was very deaf.

A. Yes; she was deaf, but because of my having a loud voice I had no difficulty.

Q. Do you know of your own knowledge of any gifts she ever made to any charitable institutions?

176 A. Well, she never told it to me, but I have heard of her generosity. No; not to me. No; I was not intimate enough with her for that.

Q. You say you were not intimate with her?

A. I was intimate in the house, but not individually. Mrs. Campbell was the mother of my intimate friend.

Q. Very different between being intimate with the daughter and somebody else?

A. Of course.

Q. Were you very intimate with Mrs. Campbell?

A. No; not very intimate.

Q. Did you ever have occasion to observe her with a critical view with respect to whether she was strong or weak?

A. Why, I was never asked to observe her critically. I only observed her—I only tell you what my impression was from my visits to the house. I never had any cause to. What I tell you was my impression.

Q. With respect to the strength of mind, was that impression also very impressive?

A. That she was a decided character?

Q. Is that merely an impression?

A. Merely an impression. I tell you I was not intimate. She never expressed any personal sentiments of that character.

Q. It is my duty to ask these questions in order to test your opportunities of knowing.

A. They were not so very intimate, I don't suppose.

Q. You do not remember of any occasion upon which she was called upon in your presence to be decided about anything?

177 A. Well, yes; not exactly in my presence, but I remember an occasion upon which she was urged, and I think, perhaps by myself, to make a change in her apparel which seemed to be made necessary by the weather. She was decided enough to say

she did not need it. That shows decision. She was not influenced by others.

Q. She knew better than you did that she was not cold?

A. Knew better—better than I did.

By Mr. CLAUGHTON: She was not cold and did not need it.

ELIZABETH D. BEALL.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

Julia A. Russell.

JULIA A. RUSSELL, a witness on behalf of the defendants, of lawful age, being duly sworn, deposed as follows:

By Mr. CRAGIN:

Q. Where do you reside?

A. No. 434 South 42nd street, Philadelphia, Pa.

Q. What is your age?

A. Sixty-six.

178 (Counsel for the complainant objects to this witness upon the ground that her husband, Alexander W. Russell, is a co-defendant with her in this cause.)

By Mr. CRAGIN: I have called her to testify, if the court afterwards permits it, as to any statement made to her by her mother, in answer to the charge of undue influence brought against her by the bill in this cause, subject to this objection.

Q. Mrs. Russell, state whether you have used any influence whatever with Mrs. Mary I. Campbell to induce her to give you any bonds or money?

A. Never, sir.

Q. Any suggestion whatever to her?

A. Never spoke to her.

Q. You stated in your answer to this bill that you only recalled the one instance of the gift of the amount of those bonds by your mother to you. Were there any other gifts that you now recall which were made by her to you?

A. She gave me one thousand dollars at one time and $125 which she presented to my husband on the watch—made him a present of a watch.

Q. One thousand and $125?

A. And then one hundred dollars she gave me when my son was ill at Kane, to help defray our expenses. Those were the only moneys she gave me, except the usual Christmas gifts she gave us—$100.

Q. I hand you a letter marked "Exhibit M. No. 1" and ask you to state in whose handwriting that is and to whom it was sent.

A. My mother's writing. Has on the back of it "For
179 Julia;" that is my name.

(Counsel for the defendants states that this letter is again offered in evidence.)

Q. Now I hand you this letter dated June 17, 1882, and ask you in whose handwriting that is and whether you received it.

A. Yes, sir. "Dear Julia," from Mary K. Campbell, June 17, 1882.

(Counsel for the defendants now offers this letter in evidence, and it is marked "Defendants' Exhibit No. 2.")

By Mr. CLAUGHTON: This is expected to for the reason that it is altogether irrelevant and immaterial.

Q. Mrs. Russell, it has been testified that Mrs. Campbell stated that she was unhappy both in your home and in the home of Mrs. Moore. State what your relations were with your mother in your home in Philadelphia.

A. Very pleasant, sir.

Q. Anything unpleasant at any time?

A. No, sir. I was taken sick, and the doctor said I must have less care and anxiety. My sister came on and brought her to her home. I think she was with me about six years.

Q. I am not permitted to ask you as to any statement made by her to you, and I do not wish to do it——

A. About money affairs?

Q. About any affairs.

A. Because she never talked to me about money affairs.

180 Q. What was her condition mentally and physically while she was living with you?

A. She was very well up to the time she was taken so sick.

Q. When was that?

A. I do not remember when she had that stroke of paralysis; cannot remember the date, but her mind was always clear, perfectly clear, all the time she was with us.

(Counsel for the complainants objects to the question as incompetent.)

The WITNESS. Knew exactly what she did.

Q. She remained with you during what period?

A. She was there about six years with us. She was taken sick with a stroke of paralysis. She was ill all winter. My sister came on and helped to nurse her. We did everything for her; had the best physicians in Philadelphia. As I say, I was taken sick while she was sick, and the doctor said the attack was brought on by over-anxiety, and my sister came on and brought her home.

Q. Brought her to her home?

A. She was at my home.

(So much of the answer as refers to what the doctor said is objected to by the counsel for the complainant-.)

Q. Do you know her disposition towards charitable objects?
A. Oh, yes; she was always giving money away. There was a church opposite to us that needed repairs. They built a new lecture room. My mother gave them a handsome clock; helped the minister because his salary was not quite enough, and there
181 were poor people always coming to our house. She gave a great deal away.

Q. Were you present at Mrs. Moore's when your mother transferred these bonds—$13,000 of bonds—to you and Mrs. Moore?
A. I was, sir.
Q. When did that take place?
A. The 5th of October, I think; soon after the death of my aunt.
Q. What year was that; same October that your aunt died?
A. Yes, sir; cannot remember dates.
Q. Was it the 5th or 6th of October?
A. The 5th, I think.
Q. You think it was the 5th?
A. Yes, sir.

No cross-examination.

JULIA H. RUSSELL.

Subscribed by the examiner with the consent of counsel, the witness having been first duly sworn in accordance with law.

R. F. DOWNING,
Examiner in Chancery.

182 *Christiana Virginia Moore.*

CHRISTIANA VIRGINIA MOORE, a witness of lawful age, being duly sworn, testified as follows on behalf of the defendants:

By Mr. CRAGIN:

Q. What is your age?
A. I am sixty-one.
Q. Where do you reside?
A. No. 1680 31 street, Washington, D. C.

By Mr. CLAUGHTON: I make the same objection to this witness, the ground for the same being that she is sued jointly with the co-defendant, Frederick L. Moore, her husband.

Q. You are the daughter of Mrs. Mary I. Campbell?
A. I am.
Q. During what years did your mother reside with you?
A. She came to us in '79 or '80 and remained until '86. She then went to my sister, and my father dying in '81 fixes the date. She had been with us some time before he died. She remained with us until 1886, when we went abroad on account of my health. She then went, in June, 1886, to my sister in Philadelphia. She stated to me——

Mr. CRAGIN: Leave that out.

The WITNESS: I wanted to give the reason why she wanted to go.

Q. Have you covered all the period?

A. Then she returned to me. She remained in Philadelphia about six years and returned to us in May, 1892, remaining with us until her death, August, 1893.

183 Q. It has been testified here by Mrs. Laura Baker that she, Mrs. Laura Baker, paid a visit to Mrs. Mary I. Campbell at your house, in which she had a conversation with Mrs. Mary I. Campbell, after which conversation she, Mrs. Baker, saw you, and you stated to her that if Mrs. Mary I. Campbell had said anything unpleasant about the family to her in substance—that is, that she must not mind her; that she was in her dotage, and she went around the neighborhood telling different stories about you. Did any such conversation as that take place with Mrs. Baker, which she thinks, I believe, took place from four to six weeks after the death of Miss Eloise Campbell?

A. Such a conversation was impossible. It did not take place for three good reasons. In the first place, I always resented any one saying my mother was in her dotage. She never was in her dotage. Her mind was always clear, and I never permitted any one to say it without checking them. That is one reason. I never in my life heard of my mother saying anything against me to any one; therefore I could not have asked Mrs. Baker not to believe what I never suspected my mother of stating. There is still another and better reason. At the very period—in fact, this period at which she has finally fixed for this conversation—I was in New York, in the hands of a surgeon. Our house was closed. My mother was spending about two months with my daughter, Mrs. R. B. Tenney, 3108 Q street, Mr. Moore and my daughter being in New York with me.

Q. When did you go to New York?

A. Between the 10th and 15th of October. The exact date

184 I cannot give, but it was between the 10th and 15th of October. My aunt died on the first. My health had been wretched, and I had to stay at home through hay-fever season. My son, a physician in New York, wrote me to come there to recuperate, as he wanted to consult a surgeon about my condition. I went to New York between the 10th and 15th, settling——

Q. Of what month?

A. Of October, settling——

Q. October, 1885?

A. 1885, of course—settling my mother with my daughter, Mrs. Tenney, first, to remain until our return. The reason that we settled her before we went was that my daughter Ella was going north to wait upon her cousin, and I wanted to relieve her. She was compelled to remain and have her bridesmaid dress completed. Miss Blanchard remained with her. Mr. Moore and I went on ahead.

Q. That was the Miss Blanchard that testified here the other day?

A. Yes, sir; I went to New York, my son urging me to see this physician. I told him——

Mr. CRAGIN: Never mind what you told him.

—I remained after the wedding in Philadelphia, staying there one day after the wedding, and went back to New York.

Q. The wedding was whereabouts?

A. In Philadelphia. Then my daughter joined us there. Mr. Moore, my daughter, and I returnod to New York. I was put under the care of a surgeon then. He sent me home for about two weeks to go through certain treatment to enable me to endure surgical treatment.

Q. What month was that?

A. That was—the wedding was on the 27th.

185 Q. Of what month?

A. Of October, 1885. I went back the 29th. I returned to Washington, it must have been, the early days of November. I remained there——

Q. Remained where?

A. At 1680 31st street; simply Mr. Moore and myself. I wrote to my mother and told her I was coming home——

Mr. CRAGIN: Don't say that.

My mother remained at Mrs. Tenney's, thinking it better for her not to come back to the house and then go back, as I was to return to New York. That is why she did not come to the house during that time. It was November, cold weather, and she did not come to the house. I went to back to New York. This operation was performed on the 19th of November, 1885. I was there with a trained nurse for three weeks, remaining until Monday or Tuesday, the 13th or 14th of December, when I was carried home.

Q. When did your mother return to the house for the first time after that?

A. After that? My mother had been settled in the house that day. She came in the morning. I came in the afternoon, leaving New York somewhere about the midday train, arriving in the afternoon.

Q. Mrs. Moore, did you attempt to exercise any influence over your mother in reference to the gift of the bonds to you and your sister—$13,000 of United States bonds?

A. Never. It was as great a surprise to me as to receive such a gift from you now.

Q. Did you ever ask her for any money at any time?

A. Never, for we were brought up not to ask for money.

186 We were given an allowance as children, and it was continued all our lives until our marriage, and we were taught it was indelicate to ask for money, and we did not do it.

Q. You have stated in your answer to this suit that you recall no gifts from your mother except those of the bonds?

A. Yes.

Q. Have you since thought it over; and, if so, have you found that you did receive other gifts?

A. I received one thousand dollars in 1883, I think it was. It did not impress me because I gave away my own upon receipt of that.

Q. With that exception, you have no recollection of receiving any money from your mother?

A. Any money—generally was not in the habit of receiving money except at Christmas. We never even mentioned money or birthdays, lest she would feel that she ought to give us presents.

Q. What was your mother's disposition?

A. How do you mean?

Q. As to her decision of character.

A. She was as decided a woman as I ever knew.

Q. What was her mental and physical condition from 1883 down to the time of her death?

A. Mentally she was just as she always was. Her mind was absolutely clear, her judgment good, and her will very strong. Physically, she had, of course, some infirmities; but she went out, she walked out; she would go out by herself and visit the poor people down Valley street constantly.

Q. How long was she sick in her last illness?

187 A. In her last illness she was sick just three days. She was taken ill on Friday morning and died Sunday. She was not quite as clear during this time; but she remained as was—she was much more feeble, but her mind was clear, but her life was in the past—perfectly clear, but more in the past. He mind was clear, but not as vigorous and strong as it had been before.

Q. From your observation of her and your husband, how did she impress you as to her feelings towards him and his conduct towards her?

A. My mother was devoted to him. She spoke of him constantly. He took the place of her dead son. He certainly could not have been more affectionate and tender to his own mother than he was to my mother. I never knew of any friction between them—never.

Cross-examination.

By Judge CLAUGHTON:

Q. Can you name any amounts your mother gave to charity?

A. I do not think I could; I never knew anything about her business arrangements. She would talk to my husband and say, "I wish you would send a check to the Women's Christian Association for me, or to the Young Men's Christian Association" and various other charities—Doctor Sunderland's church—Sunday school. I never interfered with them; wasn't my business. I do not know the amounts; I can give you no amounts.

188 Q. Why didn't she send them herself? Why did she call upon Mr. Moore?

A. Because she was not in the habit of drawing her checks. Mr.

Moore, generally, as a son, attended to her business for her as her attorney.

Q. Was that up to the time of her death?

A. She was not able to go to attend to those matters herself.

Q. Was that up to the time of her death—all during the time she was at your house?

A. Yes.

Q. Had your mother been sick before she went down to Mrs. Tenney's, while you were absent from home?

A. Nothing very serious. She had several sick turns while she was at our house.

Q. Had she any serious sick turn just before——

A. Before she went to Mrs. Tenney's?

Q. Yes.

A. Nothing alarming. I cannot recollect. Whenever she had a little ailment we sent for the doctor.

Q. Nothing to require particular attention on your part?

A. Nothing more than any aged person would require when similarly ailing.

Q. Can you name anybody whom you had to reprove for saying your mother was in her dotage?

A. No; I think Mrs. Mary K. Campbell asked me on one occasion, in her house, if my mother was not in her dotage, and I said, No.

Q. That is the occasion to which you referred in your testimony. When anybody else said she was doting you denied it.

189 A I should have denied it, no matter who said it. I always did have a general feeling of indignation whenever my mother was accused of being in her dotage, which I regard as a sort of imbecility.

Q. Did anybody else besides Mrs. Mary K. Campbell say that?

A. I cannot say that they did.

Q. You mean by that to say that you do not remember anybody else who did?

A. I do not remember.

Q. Then in the testimony you gave about reproving or denying you referred only to this instance?

A. I referred to no particular instance. I said that whenever there was any such intimation I resented it. I have had various people to say to me at different times, "How is your mother? She must be now very feeble at her age." I would always respond, "Yes, she is rather feeble with the feebleness that age brings, but her mind is very bright." It was to me a remarkable thing, and therefore I commented on it always.

Q. Now, can't you come down to the simple question? In your testimony-in-chief you stated that whenever any one said that your mother was in her dotage you resented it. Now, my question is, Did you when you gave that testimony have in your mind the occasion to which you are just testifying, when Mrs. Mary K. Campbell asked you that question?

A. I had no case in my mind. That came to me when you pinned me down to give you a case. I recall that conversation.

That occurred in Mrs. Mary K. Campbell's parlor. It was asked kindly, pleasantly, I thought freely, as a matter of inquiry about my mother.

190 Q. And that is the only occasion that you now remember?

A. It is the only occasion that I absolutely remember.

Q. Have you any qualified remembrance of any other case?

A. No; if I had a qualified remembrance, I would have a real remembrance.

Q. You stated why it was *was* when the neighbors and friends asked you about the health of your mother that you took such occasion to say that her mind was perfectly clear.

A. I did not say that I always said it, but whenever there was any little idea that "your mother must be very feeble" I would always say that "she has the feebleness incident to old age, but she has a clear mind." I always spoke of her in that way. I was proud of her.

Q. You understand, then, when an inquiry is made about the health of another that the inquiry involves the state of the mind?

A. If that inquiry is made of one who is at an age when most people are weak-minded, it does to me.

Q. And it was for that reason that whenever that inquiry——

The WITNESS: Not whenever.

Mr. CLAUGHTON: Sometimes; sometimes when it was made that you took occasion to say, She is in the ordinary feeble health of a lady of her age, but her mind is always clear.

A. That is, when I said anything about her mind at all I said it was clear, but I did not say whenever. I took pains to say it whenever I thought the inquirer's tone implied that she must be very feeble. I would then make the matter clear to them. I was proud of my mother's condition. She was a remarkable woman mentally.

191 Q. Very naturally proud of her. Now, can you remember any person from whose tone of inquiry you felt the suggestion that her mental condition was involved?

A. I have already told you that I do not.

Q. But you have just stated also that whenever there was something in the tone of the question which suggested that might be the consequence in the mind of the inquirer that you did say her mind was clear.

A. When it was suggested to me by a tone I cleared my mother by saying it.

Q. Can you now remember who it was that ever suggested it?

A. I have told you I do not. Mrs. Campbell asked the plain question.

Q. Was there ever an occasion, except that to which you referred with respect to Mrs. Mary K. Campbell, where the tone of voice of any other person asking after your mother's health suggested to you that her mental condition was in the mind of the questioner?

A. People seldom asked about her health without making some hint about this being remarkable. I cannot pin myself down to any particular individual to whom I made such remarks.

Q. I understand you to say that whenever you did make such remarks that the tone of the inquirer called them forth?

A. Either the tone or the direct question.

Q. Now, you cannot remember any one whose tone did make such an expression?

192 A. Certainly not. Simple matters of that kind I cannot recall. It was a matter of no interest to me after the question was answered.

Q. About the time of the death of Miss Eloise Campbell did you or Mr. Moore make any other trip, except that to New York, abroad?

A. Excepting to Philadelphia to the wedding. It was all one continuous trip. We went to New York, then to Philadelphia to the wedding, then back again to New York. Then I stayed at home.

Q. Did Mr. Moore ever make a trip to Florida?

A. We went so often to Florida I do not remember the first trip.

Q. Can you approximate the date of it?

A. Not possibly. I have no data from which to make it.

Q. During the lifetime of your mother, was it?

A. That Mr. Moore went, or both of us, or what?

Q. When he went.

A. I am so turned about I really do not know. It was a great many years ago.

Q. Do you not remember whether it was in the lifetime of Miss Eloise or not?

A. I cannot tell anything about it. Mr. Moore did not go to Florida while Aunt Eloise was at our house. He did not go to Florida in summer.

Q. What time was Miss Eloise at your house?

A. She came in May, 1885, and died October 1st, 1885.

193 Q. Now, do you remember whether Mr. Moore had been to Florida before her death or not?

A. I do not.

Q. Is it not your impression that he went after her death for the first time?

A. I have not the slightest idea. I cannot tell you. I do not know.

Q. What was the state of his health at that time?

A. About what time?

Q. About the time of Miss Eloise'- death.

A. I do not recollect that. He was not ill. He may have had some ailment—some temporary trouble. I do not know. I have no recollection of his being ill at the time of Miss Eloise'- death. No; because he went to New York with me.

Q. That was not immediately after her death.

A. It was; between the 10th and 15th of October, 1885, and she died on the first of October, 1885.

Q. So your recollection does not serve you about the first time you went to Florida?

A. It does not.

Q. You do not remember that about that time—about the time of Miss Eloise'- death—that his health was not robust?

A. Don't remember. I was too ill myself.

Q. Had you any knowledge, Mrs. Moore, of the existence of this fund from which Miss Eloise'- annuity under William H. Campbell's will was paid?

A. When I heard my father's will read I knew that my aunt was to be provided for, but I did not know the amount. It was
194 a matter with which I had nothing to do.

Q. Did you or not know what part of the estate of your father had been set aside?

A. I did not; that was the executors' affair.

Q. You did not know whether it was in the shape of bonds or money or rents from real estate?

A. I did not.

Q. Did you know whether your mother did or not?

A. I do not know.

Q. With respect to the charitable disposition of your mother, I understand that you have the general knowledge of the fact that she was charitably disposed, but that you have no knowledge of the amount of her benefactions in that way.

A. I have not. From my earliest childhood that was her main pleasure—helping those who were destitute. From my earliest childhood I remember it. She was always doing it, and the charitable disposition extended not only to persons who were destitute, but to charitable institutions, as a general thing. It extended to both.

Q. But still you do not know, with respect to either line of charity, anything about the amount of her benefactions?

A. I certainly do not. I never inquired.

Q. I did not get the date of your mother's going to Philadelphia.

A. She went in June, 1886.

Q. You went there after that?

A. We sailed for Europe a few days after that. I could scarcely be mistaken.

A. That is my mother's handwriting.

Q. Now, look at the first date on that.

A. I see; Philadelphia, March 22, 1886.

195 Q. Now, then, with that paper in your hand do you still adhere to your deposition?

A. I still adhere that my mother went to Philadelphia from our house in June, 1886, and a few days after that we sailed for Europe. It was on the 12th of June, 1886.

Q. Had she been to Philadelphia before?

A. She did go and pay a visit to Philadelphia after my father's death.

Q. What year was that?

A. I cannot tell you. I do not know.

Q. Do you know the year your father died?

A. He died in May, 1881, but I do not know what year my mother

went to Philadelphia to pay a visit after my father's death. I know that she went.

Q. Was she sent for, for a week after?

A. I should have to think and get some data.

Q. Well, think.

A. I do not know. It was not important to me. I do not know.

Mr. CLAUGHTON: I now ask that the paper identified by Mrs. Moore as being in the handwriting of her mother be marked for identification, and it is marked by the examiner with the words "Marked for identification."

CHRISTIANA VIRGINIA MOORE.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn in accordance with law.

R. F. DOWNING,
Examiner in Chancery.

196 *Alexander W. Russell.*

ALEXANDER W. RUSSELL, a witness on behalf of the defendants, of lawful age, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. Where do you reside?

A. No. 434 South 42nd street, Philadelphia, Pa.

(Counsel for the complainant objects to the examination of this witness on the ground of incompetency, because of the fact that his wife, Mrs. Russell, is a codefendant to the suit.)

Q. Mr. Russell, I am not permitted to ask you as to any statement made by Mrs. Campbell nor as to any transaction had with her. You were, I believe, one of the executors under the will of William H. Campbell?

A. I was.

Q. Who was associated with you in your executorial duties under the estate of Mr. Campbell?

A. Mr. Frederick L. Moore and Jordan W. Maury.

Q. I wish to ask you whether you attempted in any way to influence Mrs. Mary I. Campbell to give your wife half of the $13,000 of United States bonds that were in your and Mr. Moore's and Mr. Maury's hands, as executors of Mr. Campbell's estate.

(Counsel for the complainant objects to this question as incompetent and irrelevant.)

By Mr. CRAGIN: Was there any attempt made to influence Mrs. Mary I. Campbell on your own behalf or on behalf of your wife as to that gift of those United States bonds?

197 A. No; I did not know of the gift at all. My wife returned from Washington, after having received them.

Q. When did you transfer, with Mr. Moore, as surviving executors, those bonds to Mrs. Mary I. Campbell?

A. Upon notification received from Mr. Moore. I went on the 5th day of October, in the morning, from Philadelphia. I came on to Washington, went to the Treasury Department, and we transferred the bonds to Mrs. Campbell, and I immediately returned to Philadelphia on the same day.

Q. Why didn't you file with the probate court a memorandum or certificate showing the transfer of those bonds?

A. I was in a hurry to get back to my office in Philadelphia. I had charge of the navy pay office there, and I could not delay to discuss the matter with Mr. Moore. I presumed that the receipt of Mrs. Campbell would be obtained and filed to settle the matter.

Q. Look at this paper and see whether that is the receipt from Mrs. Mary I. Campbell for those bonds.

A. That is the receipt of Mrs. Campbell, and dated on the day of the transfer to her.

Q. Have you ever seen that paper before?

A. Never saw it before, and it is Mrs. Campbell's handwriting.

Mr. CRAGIN: I offer this paper in evidence, and it is marked "Defendants' Exhibit No. 3."

Q. Mrs. Mary I. Campbell resided at your house during what years?

A. From 1886 to 1892; from about June, 1886, to May, 1892.

198 Q. What was her mental and physical condition while she was with you?

A. Mentally, she was as well apparently as I have known her since my marriage.

Q. Physically?

A. She was quite active. She took a great deal of exercise, particularly about the house. She had the room of the house; took great delight in feeding birds from her window. She had those English sparrows. She had a great fondness for feeding the birds from her window, and when she would see a cluster of them she would walk out of her room and go into the library and throw her bread out of the window to them.

Q. Was she sick any time during that period?

A. She was very ill during the month of November and part of December.

Q. What year?

A. 1891—November and December, 1891.

Q. She left your house and returned, as I understand, then, in 1891, to her daughter's, Mrs. Moore's.

A. 1892.

Q. 1892. Then she had just recovered from her spell of sickness?

A. She had been some time recovered from it. Her serious sickness was in November and December, 1891.

Q. State, if you know, anything about her feeling towards charitable objects.

A. I do know, because on a number of occasions I was the medium of communication, particularly in regard to the Woodland
199 church—a church that was somewhat in debt—in which she took a great deal of interest, and the new pastor, who was trying to work the church out of debt, and finally succeeded. She sent on one or two occasions, by me, contributions to the treasurer, Gen. Gordon, and then asked me how she could give them something on another occasion. She wanted to——

Mr. CRAGIN: You cannot make any statement as to what she told you?

The WITNESS: No. Then, I know for what she wanted it, for she inquired of me to know what I would advise her to do. She wanted it to go into the general fund of the church. I suggested to her that she rent a pew there and the fund would go into the treasurer's hands. She also asked me to rent a pew, which I did—pew eighty. She did not occupy her pew, because she could not hear at the sermon. That was one of her contributions. It was done with the object of helping the church.

Q. She had how many persons during her stay with you, waiting on her as maids—attending to her?

A. There was Sarah, who had been in the family 28 years, and another colored woman after Sarah left us, and then when she was taken seriously sick we had a professional nurse.

Q. Was that the professional nurse who came on to Washington with her?

A. Came to Washington with her and returned to Philadelphia a short time after. I came to Washington with her.

Q. What has become of those nurses and maids?

A. Sarah is deceased. She was from the old George Washington Parke Custis estate, and the colored woman who left us, I do not know where she is. The professional nurse I did hear, because
200 we felt interested somewhat in her, that she was quite ill somewhere.

Q. How would you represent her, picture her—as a woman of strong or weak will-power?

A. Mrs. Campbell was in many instances, and generally in a matter she would consider it very carefully; make up her mind, and it was immovable when she did it.

Q. Was she easily influenced?

A. Not at all.

Q. Did she ever give you anything?

A. Yes. I came home from my office one day, and one of my sons brought me two watches in two cases and asked me which I thought was the better. I indicated one, and then he told me that I had selected the cheaper one of the two—$125 and $150. It came from Bailey's. Mrs. Campbell told me that she wanted——

Mr. CRAGIN: Nothing that Mrs. Campbell told you.

The WITNESS: Well, she gave me a watch, and the cost of it was $125. It is this watch I have here.

Q. Do you or do you not recall the fact that she gave you some-

thing extra in the way of executor's commissions in the settlement of her husband's estate?

A. Yes; I do recall it. The commission we charged was very low—one thousand dollars, I think—and she made it up, according to the best of my recollection—I cannot be sure—positive—She made it up to $500 each, to Mr. Moore and myself.

Q. You are not sure about the commission?

A. I am not positive.

Q. With those exceptions, were there any other amounts you recall that she gave you?

201 A. Nothing. My wife has testified as to what she gave her.

No cross-examination.

ALEXANDER W. RUSSELL.

Adjourned by consent of counsel to meet Thursday, Nov. 12, 1896, at 12 o'clock m.

Subscribed by the examiner by consent of counsel, the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

THURSDAY, *Nov.* 12, 1896—12 m.

Met pursuant to adjournment.

Present: Mr. Claughton, on behalf of the complainants, and Mr. Cragin, on behalf of the defendants Moore and Russell.

Return J. Meigs.

RETURN J. MEIGS, a witness on behalf of the defendants, being duly sworn, of lawful age, testified as follows:

By Mr. CRAGIN:

Q. What is your occupation?

A. Assistant clerk in the supreme court of the District of Columbia.

Q. How long have you occupied that office?

A. Thirty-two years.

202 Q. Are you familiar with the handwriting of Mr. John C. Kennedy, member of the bar, now deceased?

A. I have seen him write often. I think I might recognize it.

Q. Look at that paper and tell me whether it is in his handwriting or not.

A. Looks very like it, especially about those capital letters. I have seen him write very often when he was in the office; he did a great deal of writing in the clerk's office. I believe that is his handwriting.

RETURN J. MEIGS.

This paper is now offered in evidence by the defendants, and it is marked "Defendants' Exhibit No. 4."

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn in accordance with law.

R. F. DOWNING,
Ex. in Chancery.

Frederick L. Moore.

FREDERICK L. MOORE, a witness on behalf of the defendants, of lawful age, being duly sworn by the examiner, testified as follows:

By Mr. CRAGIN:

Q. What is your age?
A. I am sixty-one years old.
Q. What is your residence?
A. Georgetown, D. C., 1680 31 street N. W.
203 Q. Who did you marry?
A. Christiana Virginia Campbell.
Q. Who was J. W. Maury—Jordan W. Maury, who was he?
A. He was coexecutor under the will of William H. Campbell.

Mr. CLAUGHTON: This testimony is objected to because it is fully established by the record that J. W. Maury was coexecutor under the will of William H. Campbell.

Q. When did he die?
A. I think about 1883. That is my recollection.
Q. How long did Mrs. Mary I. Campbell reside with you?
A. I think she came to us in 1879 or '80. I have forgotten, exactly, and I think she lived with us until early in 1886. Mr. Campbell died May 21, 1881, and Mrs. Campbell continued with us until June—early part of June—1886.

Mr. CLAUGHTON: Exception noted to the testimony of Mr. Moore because he is an incompetent witness under the law, being codefendant in this cause with his wife, Christiana Virginia Moore.

The WITNESS: Then she went to Philadelphia and resided.
Q. She lived there between five and six years and then returned to your house?
A. She returned to our house in 1892.
Q. And died?
A. August, 1893.
Q. What kind of a woman was Mrs. Mary I. Campbell, as to her physical and mental condition, during the time she was at your house?
204 A. Well, during the time of her first visit she was a very active, industrious woman—always busy—and her health was most excellent. For the first five or six years she was at our house she was a remarkably bright, quick-witted woman. When she came back from Mr. and Mrs. Russell's she was five or six years older and, of course, was not so strong physically as she was before, but still a bright, intelligent woman.
Q. How was she in will power?

A. She was a woman of very strong will. She had very decided opinions on all subjects and gave them always.

Q. Was she or not easily influenced?

A. Well, no. I am sure she was not easily influenced. You never could influence her out of any idea. If she took an idea into her head, no matter on what subject, she held on to it tenaciously.

Q. What were her relations with you as to friendship—you and your wife?

A. The relations of child to a mother, as far as it was possible. I think she thought of me as a son, and I did try to do a son's part by her in every way.

Q. Was there at any time anything unpleasant between any of you?

—. ——.

Q. Anything unkind?

A. Nothing that I recollect.

Q. Had she any fear of you?

A. None whatever. She had no fear of any one. She did not know what fear was.

Q. Mr. Moore, did you attempt to exercise any influence over her as to how she should give money in any way?

A. I never did.

205 Q. To give bonds or other personal property she may have had?

A. Never did.

Q. Did you ever make any suggestion to her as to what she should do with her money, or anything of that kind?

A. Never did.

Q. The law will not permit you to testify as to any statement made by her to you or as to any transaction with her. Now, I want to simply get from you, without trespassing on that rule of law, what took place with reference to the transfer of those bonds, if it is possible for you to state anything, and leave out anything that she stated, as to the transfer of the $13,000 of United States bonds to her and the transfer afterwards by her to your wife and Mrs. Russell.

Mr. CLAUGHTON: Exception noted to this question on the ground that it is asking in an indirect way for a relation of what transpired in a transaction between the deceased, Mrs. Campbell, and the witness.

A. Well, if I am not to state what I said to her——

Q. Say as a result of what took place.

A. As a result of what took place, she divided the $13,000 worth of bonds between her two daughters.

Q. How did she do it?

A. She went to the United States Treasury Department with me and made the transfer.

Q. What had you done previously with those bonds?

A. I had transferred them. Mr. Russell and myself had transferred them the day before to her.

Q. When was that?

A. The 5th of October.

Q. What year?

206 A. 1885; and I so notified her on my return home, that Mr. Russell and I had transferred those bonds to her, when she again transferred—on the very next day transferred—them, one half to Mrs. Russell and the other half to Mrs. Moore.

Q. Did you make any suggestion whatever to her as to the transfer of those bonds to your wives?

A. Never, sir.

Q. Did she give you any money or bonds?

A. She gave me at the time she gave Mr. Russell the $125 watch—she gave me $125, but I did not buy a watch with it. I had a watch. That is all she ever gave me, except the $166.66.

Q. What was that?

A. Why, when we administered upon the estate of William H. Campbell the three executors took one thousand dollars for commissions in full. She said, Mr. Russell——

Mr. CRAGIN: You must not state anything she said.

The WITNESS: As a result, she voluntarily gave us each $166.66.

Q. Look at this letter and say whether it is in reference to the watch you speak of as having been given by Mrs. Campbell to Mr. Russell and yourself.

A. That is a letter by Mary I. Campbell to me.

(This letter is marked for identification as "Defendants' Identification No. 1.")

Q. In the same way, will you identify this letter? State in substance what it is.

207 A. Yes. I identify this as relating to that $1,000 to each of her daughters. She wanted to give—that is, a letter to me from Mary I. Campbell, in which she speaks of giving one thousand dollars.

Mr. CLAUGHTON: I object to so much of the answer of the witness as relates to what this letter contains, and it is also objected to on the ground that the counsel for the defendants declines to file the letter, which is the best evidence of what it contains.

(This letter is marked "Defendants' Identification No. 2.")

Q. Why was not some memorandum or receipt filed in the probate court as to the transfer of those bonds by you?

A. Because it was entirely forgotten by me. I got a receipt and had forgotten entirely about the transaction. It ought to have been filed. I put it in a file—one of those things such as you have—with some old papers of Mr. Campbell's, and never found it until about five or six weeks ago, in looking over some papers, just back of all these other old papers. I found this sticking to the side of this envelope.

Q. Did you or not suppose that some receipt had been filed up to the time this suit had been begun?

A. I supposed, of course, I had settled the whole estate of William H. Campbell, and never gave it a thought. I thought it was all closed up until I was notified that I had not filed the receipt.

Q. About what was Mrs. Mary I. Campbell worth, in real and personal property, at the time of this gift of $13,000 of United States bonds?

208 A. About eighty-nine thousand dollars, it has turned out since; estimating this house on E street at $15,000 and add $26,500, which the house brought on the Avenue, to her personal property would make about $89,000.

Q. State, Mr. Moore, where this paper was found and by whom.

A. I found it among William H. Campbell's effects—in papers that he left. I found it with a memorandum—just with this memorandum that I have here, with the papers of William H. Campbell.

Q. Are you familiar with the handwriting of Mr. John C. Kennedy?

A. No, sir. I cannot say that I was. I do not know that I ever saw any of it except that.

Q. The memorandum that you found accompanying the will, as you state, in whose handwriting is that?

A. William H. Campbell's.

Q. Mr. Moore, have you settled entirely the personal estate of Mrs. Mary I. Campbell?

A. Yes, sir. That is all settled—everything except the sale of this house.

Q. Receipts taken from the distributees?

A. Yes, sir.

Q. Why was not the E Street house sold?

A. Because it was advertised to be sold, and we were notified by counsel for the plaintiffs that we should not sell it, I think.

Q. Was it offered for sale before that?

A. Yes, sir. It was offered for sale the same date that the store was offered.

209 Q. Why was it not sold?

A. Not a single bid was made on it—no bidders.

Q. What did you do with the property after the first attempted sale?

A. It was still continued with a tenant in it—rented.

Q. Place it in the hands of any real-estate agent for sale?

A. Yes, sir; in the hands of Graham and Campbell.

Q. Did you or your wife ever listen at the doors of Mrs. Campbell's room at your house to any conversation that took place inside?

A. Never, sir.

FREDERICK L. MOORE.

No cross-examination.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn in accordance with law.

R. F. DOWNING,
Ex. in Chancery.

Miss Mary Ella Moore.

Miss MARY ELLA MOORE, a witness on behalf of the defendants, being of lawful age, having been first duly sworn by the examiner testified as follows:

210 By Mr. CRAGIN:

Q. Whose daughter are you?

A. Frederick Lawrence Moore's.

Q. And your mother?

A. Virginia Campbell Moore.

Q. What room did you occupy before Mrs. Campbell came to your house to reside?

A. Southeast room in the mansard roof.

Q. How did you happen to give it up?

A. Because grandpa and grandma preferred it. It had a dressing room and bath-room attached, which was very convenient.

Q. At whose request did you give it up?

A. At no one's request. They preferred it, and I was glad to have them have it.

Q. State the feeling that existed, if you know, between your father and mother and Mrs. Mary I. Campbell during her residence with you, and the affection that there was on her part towards you and you towards her.

A. I think grandma was an unusually affectionate woman towards her children, and we certainly did everything we could to render her life happy with us. She was very devoted to us all.

Q. What was her condition, mental and physical?

A. She was remarkable well for a woman of her years, and mentally she was the companion of us all. I never saw as bright a person for her years in my life.

Q. What was her disposition as to firmness and decision of character?

A. She had a very decided will.

Q. Was she easily influenced or not?

211 A. No. It was almost impossible to influence her if she thought differently.

Q. Do you know from expressions used by her in what regard she held your father and mother?

A. Yes. She often expressed herself as being very happy with them, and appreciated all that they did for her, and I think she was unusually fond of father.

Q. Did she ever evince any fear of him?

A. Not the slightest. She did not fear anything but horses.

Q. Did you ever listen at her door to any conversation?

A. I never did.

Q. Did you ever find any of the family doing it?

A. Never.

Q. You had another member of the family, I believe, who has left since Mrs. Campbell resided with you. Who was that?

A. My brother.
Q. Where does he reside now?
A. My brother, the doctor, resides in New York.
Q. Is he at home now?
A. He is not at home.
Q. Do you know anything about her gifts to charity of different kinds?
A. I know that she gave to a great many objects and people and was interested in all charitable objects, especially the poor.
Q. Did she speak to you about them?
A. Very often she talked over a great many charitable objects and people with me.
Q. Do you know when she left your mother's to go to reside with your sister, Mrs. Tenney?
212 A. She left there between the 10th and 15th of October, 1885, and stayed at Mrs. Tenney's until the middle of December—somewhere from about the 13th to the 19th of December.
Q. How did you know that?
A. Because Miss Blanchard came to stay with me, and grandma was not in the house at that time, and then I went to my sister's and saw her, and the house was closed most of that time.
Q. Where were your father and mother?
A. New York.
Q. When did your mother return from New York?
A. About the first of November, and remained two weeks.
Q. Did Mrs. Campbell come back to the house and stay there?
A. She did not.
Q. Then what did your mother do?
A. My mother returned to New York by the 18th of November, and remained there until the middle of December, in the hands of a surgeon.
Q. Now, your mother returned, you say, about the middle of December?
—. ——.
Q. About the middle of December. When did Mrs. Campbell return to the house also?
A. She returned the morning of the day we returned from New York.
Q. Now, Miss Ella, I have some letter- here I want you to identify. I hand you here letters which I have previously offered in evidence, marked "Defendants' Exhibit No. 2" and "Exhibit T No. 2" and "Defendants' Exhibit No. 3," and ask you to state in whose
213 handwriting they are. First, "Defendants' Exhibit No. 2."
A. That is Mary K. Campbell's.
Q. And the other two?
A. In my grandmother's, Mary I. Campbell's. The signature to Defendants' Exhibit No. 3 is my grandmother's.

By Mr. CRAGIN: As to the two papers I have previously had identified but not introduced in evidence, and marked "Defendants' Identification No. 1" and "Defendants' Identification No. 2," in whose handwriting are those?

A. Those are in my grandma's, Mary I. Campbell.

Q. I now hand you papers marked "Defendants' Exhibit No. 5," "Defendants' Exhibit No. 6," and "Defendants' Exhibit No. 7," and ask you in whose handwriting are those.

A. They are all in my grandmother's handwriting.

By Mr. CRAGIN: I now offer these and reoffer such of them as have already been introduced by me in evidence and those that were marked for identification—all the papers above named I now offer in evidence.

Q. Miss Moore, I hand you paper marked "Defendants' Exhibit No. 5" and ask you to state, as near as you can remember, the conversation that took place, and when it took place, that gave rise to the writing of that paper.

A. Well, it was on the evening of October 5th, 1885. My father and uncle had attended to business of grandma's at the Treasury, and when my father returned he told my grandmother of the business.

Q. Did all this take place in your presence?

A. It was generally talked of. I think I heard it all. It
214 was after dinner. Grandma usually came down to dinner those days, and we were all sitting in the back parlor—my mother, my grandmother, my father, my aunt, Mrs. Russell, and myself—and grandma, with a little formality, said, Mr. Moore, there is a little matter of business I would like to attend to before Julia returns to Philadelphia—her daughter; and then she said she thought she would like to give them the bonds that had that day been transferred to her. I was surprised beyond everything and so were my parents, and my aunt and everybody greatly pleased about the matter. My parents were surprised, and expressed themselves appreciatively and gratefully, and after a few minutes my mother said to my father, Don't you think it would be well to have something in writing regarding this matter, as we have had this previous trouble with Mary about the legacy of $5,000. My grandmother leaned over, not having heard it all, and said, What was that about Mary? My mother then repeated it to her and asked her if she did not think it would be well to give something in writing so stating, and she said, "Oh, yes; certainly; by all means," and she stayed there a few minutes quietly, and went to her room earlier than was her custom—I suppose to think the matter over. The next day she went with my father to the Treasury Department on this business, and afterwards wrote this paper—at least, I saw the paper a short time afterwards.

Q. You saw it a short time afterwards?

A. Yes.

By Mr. CLAUGHTON: Exception noted to the question and answer upon the ground that it does not appear from the testimony of the witness that any of the parties plaintiff in this cause were present at the time of that conversation.

Q. In whose possession was it when you first saw it?
215 A. In my mother's possession.

Cross-examination.

Adjourned by consent of counsel to meet Friday, Nov. 13, at 12 o'clock m.

FRIDAY, *Nov.* 13, 1896—12 m.

Met pursuant to adjournment.

Present: Mr. Claughton, on behalf of the complainants, and Mr. Cragin, on behalf of the defendants Moore and Russell.

Cross-examination of Miss MARY ELLA MOORE.

By Judge CLAUGHTON:

Q. Do you know Mrs. Laura Baker?

A. Yes.

Q. Do you know what her relations were to Mrs. Campbell, your grandmother?

A. My grandmother always knew her. We have known her all our lives, and she used to come to see grandmother quite frequently. Grandma was very kind to her. She was always doing for her in every way; felt very sorry for her. She had a very hard life.

Q. Was she any connection of your grandmother's?

A. Well, my grandmother's brother married a third wife—her mother-in-law.

Q. That brother of Mrs. Campbell only married once?

A. Married three times, I think. Who were his three wives? Long before my day.

Q. You are speaking of the pedegree of the family?

A. Yes.

216 Q. Who were his three wives?

A. I do not know. I never heard of but one of them.

Q. You don't know, then? You say you know he married three times?

A. Only by hearsay.

Q. You don't know who was his first wife?

A. Know her name only—Aunt Milley, I think. Oh, that is it. I remember to have heard it.

Q. You have heard the testimony she has given in this cause. Have you heard Mrs. Baker's testimony?

A. I have heard it read.

Q. You know what it is?

A. Yes, sir.

Q. If Mrs. Baker told the truth in her representation of what your grandmother said to her, have you any doubt what your grandmother said to her was the truth?

(Counsel for the defendants objects to this question as not proper cross-examination.)

A. I scarcely understand it. I do not believe my grandmother told her.

Q. That is not the answer to the question.

A. My grandmother was a very reticent woman about her business affairs. She did not talk to the family about them. I do not know how to answer that question. I don't seem to understand it.

(The question was again read to the witness by the examiner.)

The WITNESS: Whatever my grandmother told her was the truth. I don't believe she told her anything.

217 Q. That is another thing.

A. Well, I stick to that.

Q. I believe you testified that on the 6th day of October, 1885, when your grandmother divided those bonds between your mother and aunt, you were present?

A. I did not see the bonds.

Q. I asked if you were present.

A. I was present when she told them she was going to give them the bonds.

Q. Did she say anything else in that conversation?

A. I remember nothing else. It was a short interview.

Q. Did she state the reason why she was going to give them the bonds?

A. As I said yesterday, it was to make them equal to their brother.

Q. You think you heard her say that, do you?

A. Yes.

Q. If you heard what she said on that subject, just tell us all she said.

A. She said, Mr. Moore, I have a little matter of business I would like to arrange or settle before Julia returns to Philadelphia. I wish to give those bonds which were transferred to me today—divide those bonds between Julia and Jennie to make them equal with their brother. That was the import.

Q. Did she state how they were up to that time unequal?

A. No.

Q. Did she say anything at all about in what manner the brother, Leonidas, had received more than the two sisters, Mrs. Moore and Mrs. Russell?

A. No.

218 Q. Did she refer to any record as evidence of the fact that he had received more?

A. No.

Q. Did she have that paper with her that day—"Defendants' Exhibit No. 5"?

A. Not the night of the 5th. This paper was given after her visit to the Treasury with my father. I have been speaking of the night of the 5th of October, 1885. On the 6th she went to the Treasury Department with father, and after that gave this paper.

Q. The conversation, then, to which you have been testifying transpired before she went to the Treasury to assign the bonds on the books—that is, the night of the 5th?

A. The night of the day on which the executors transferred the bonds to her.

Q. You say, now, the next day, the 6th. Did anything transpire with respect to these bonds?

A. Nothing but her going with my father to the Treasury.

Q. After she had gone to the Treasury, did anything transpire?

A. Nothing that I remember.

Q. You stated you did not see that paper on the 5th?

A. No.

Q. When did you first see it?

A. It was after the 6th. My recollection is, it was the morning of the day——

Q. Well, it was after the 6th. How long after the sixth?

A. I do not know. Shortly.

Q. Where did you see it?

A. My mother had it.

219 Q. You saw it in the possession of your mother?

A. Yes, and she told me grandma had given it to her.

Q. She told you your grandma had given it. Of course, that is not exactly right. Don't state anything anybody tells you.

(Counsel for the complainants objects to so much of the testimony as states what the mother said.)

Q. Think you can approximate that time?

A. As I tell you, it was shortly after the 6th. No, I do not know the exact date. It was before the 10th, because my mother was away.

Q. You are quite sure it was between the 6th and 10th?

A. Yes.

Q. Did you look at the paper?

A. Yes.

Q. Have you read it?

A. Yes.

Q. What was the occasion of her showing it to you?

A. I had heard the whole transaction, and she showed it to me as a mother to a daughter would do in any matter of interest.

Q. What whole transaction had you heard?

A. The conversation of the evening of the 5th.

Q. Did she say, in the conversation of the evening of the 5th, that she was going to give a paper to that effect?

A. No. My mother asked my father if it was not well to have a written statement, because of the previous difficulty about the $5,000 legacy, and grandma said—asked what they were talking about, and she was told, and said, Yes; certainly I will give the paper.

220 Q. Then, the suggestion that the paper should be given came from your mother?

A. Yes.

Q. And your grandmother complied with the suggestion?

A. She said she thought it was a good plan. She agreed most heartily.

Q. When did you next see that paper?

A. See what?
Q. That paper.
A. I saw that paper between the 6th and 10th.

By Mr. CRAGIN: After that time?

By Mr. CLAUGHTON: When did you next see it?
A. I do not know. I have a recollection of my mother showing me it one day when she was cleaning out her desk—within the last ten years; she said that is the paper. Then, I saw it since last March.
Q. You have a distinct recollection that some time before last March——
A. I am stating what my impression is.
Q. Then, you have a distinct recollection that having seen this paper somewhere between the 6th and 10th of October, 1885—you saw it once afterwards before March, 1896?
A. Yes.
Q. Now, will you try to fix the date of that one time?
A. It is impossible. My mother was clearing out her desk and I was sitting by, and she said, "There is the paper grandma gave us when she gave us the bonds."
Q. Was there any occasion for her making that remark?
A. None; except that she was talking about things that she found in her desk.
221 Q. Did she say in respect to any other paper that she found in her desk, here is a certain paper? Did she make that remark about any other paper in her desk?
A. She was turning over these papers—you know it has been years ago—and she would say this is such and such a paper, and this is such and such a paper, but they were not papers of any importance—little family matters.
Q. Do you remember of any other paper, save this, to which she called your attention?
A. No; not clearly.
Q. She having shown you that paper about the time that it was written, was there anything in your conversation at that time which suggested your attention being called to it?
A. No; I cannot say there was. Having had some difficulty about the legacy it was thought to be a good thing to have it.
Q. But that had been settled at the time that the paper was given. My question was, was there any occasion to resume the conversation on that subject?
A. No.
Q. Your explanation is, then, that it just happened so that she called your attention to that paper again?
A. Yes.
Q. Now, you have referred more than once in your testimony to some previous difficulty; what was that?
A. I cannot state clearly; it was not my affair.
Q. When it was referred to in the conversation of October the 5th, you did not understand what it was?

A. I understood—let me see. I understood the general character of it.

Q. Just give us the general character of it.

222 A. My grandfather left $5,000 to my mother and Aunt Julia.

Q. Five thousand dollars each, you mean?

A. Each; yes; which Mrs. Campbell did not seem to think right, Mary K. Campbell did not seem to think right, and my aunt—it was suggested that my aunt had influenced the change of this will. Mrs. Russell—it was suggested that Mrs. Russell had influenced the change of his will, and it made unpleasant feelings between the families.

Q. You say, changed his will. What do you mean by that?

A. Well, it was supposed that he had changed his will after my uncle's death.

Q. Had he made a will before your uncle's death?

A. I do not know personally. He was a business man and I suppose he had.

Q. When did your uncle die?

A. Died the 15th of August—seems it was '78 or '79. I have forgotten. It was the 15th of August, but I do not remember the exact year.

Q. Well, the date of this will is set forth in the bill. You state this change was made after the death of your uncle?

A. It was accused of having been. I know nothing of it.

Q. Do you know what — the relations existing between your grandfather Campbell and his son Leonidas during their lifetime?

A. Devoted to each other.

Q. Do you know the relations which existed between your grandmother Campbell and her children?

223 A. Good gracious, grandma was kind to all her children and grandchildren. There was no difference made between us.

Q. Do you know any reason, as shown by your grandmother's conduct towards her two surviving daughters and the orphan children of her dead son, that would cause her to make a difference between those orphan children and her two surviving daughters?

(Counsel for the defendants object to the question as not proper and incompetent.)

A. There was no reason, but my grandmother was a very just woman and did as she pleased.

Q. Well, if your grandfather's will was a just will, and it made no difference between his three children in the distribution of his estate if he had survived your grandmother, how could it be just for your grandmother to make a difference?

(Counsel for the defendants objects to the question.)

A. I know nothing of my grandfather's will and I won't argue on the point with you. I won't carry on an argument. I can only answer the question.

Q. You won't state, then, whether or not you know of any reason?

A. I know of no reason.

Q. Why is it that what was justice on the part of the grandfather was not justice on the part of the grandmother?

A. It was none of my business and I never thought of their reasons.

224 (Counsel for the defendants objects to the question and answer last given.)

Q. Do you or not know that there is testimony in this cause to the effect, indeed in very words, that your grandmother had stated that in the will of your grandfather she and he had tried to do justice?

A. I do not know about the testimony, but I know they tried to do justice, and in giving the $5,000 and the $13,000 bonds she did what she considered justice.

Q. How do you know that?

A. From having heard the amounts that were given to each at various times.

Q. To what amounts do you allude?

A. Oh, the whole property.

Q. That as definite as you can be?

A. As definite as I can be. My grandfather's and my grandmother's and my mother's affairs were none of my business, and I know nothing about them. I never asked them.

Q. How old were you when your grandfather died?

A. Let me see. I am forty now. I was no baby then. How long was it? Eighty-one to '91 is ten. That would make me 25; that is about the age.

Q. He was a man of robust strength, wasn't he?

A. Rather a delicate man.

Q. Health good?

A. He was rather a delicate man. He was always a delicate man; a good deal of vitality, but delicate.

Q. Have any serious spells of sickness?

A. He had several little illnesses.

Q. My question was, Did he have any serious sickness?

225 A. He was quite ill once. I was trying to remember. I think it was—I do know just when it was. He was quite sick once on E street, but I do not remember the year.

Q. Was it prior to '78?

A. I do not remember.

Q. Pardon me; I would be glad to have you tax your memory and see.

A. I have taxed it until I am nearly dead.

Q. Is it not a fact that he was very, very sick?

A. I cannot say so, for I do not know.

Q. But if he had been very sick would you not have known?

A. Yes, but I do not remember the time. I remember the illness, but not the time of it.

Q. Was he ill enough for his children to come to see him—those who lived out of the city?

A. That would be Aunt Julia.

Q. She is the only other child, is she?

A. Yes. I do not remember that.

Q. In whose handwriting is this?

A. That is my grandmother's.

Q. It has been testified in the case that this was left at the house of Mrs. Mary K. Campbell; do you know who carried that letter to Mrs. Campbell?

A. I do not.

(This letter is now offered in evidence and marked Exhibit T No. 4.)

Q. Do you know to what books your grandmother referred in this letter?

226 A. I do not know anything about the business affairs of my elders.

Q. Do you know to what charity your grandmother refers in this letter?

A. No; I do not know what charity.

Q. You do not know, so far as your knowledge is concerned, whether there was any such charity or not?

A. I do not know anything about the business. It was none of my business.

(The paper read from is marked "Defendants' Exhibit No. 4.")

Q. You do not know from your own knowledge that your uncle Leo or his family ever received an unequal portion from your grandfather's estate?

A. No.

Q. Did anybody ever tell you that Mrs. Moore or Mrs. Russell, or your father tell you that he had received more?

A. I always understood in a general way. No one ever told me, but, as I heard others, I understood in a general way that he had received more.

Q. Well, then, there were conversations in your presence upon that subject?

A. Just in a general way.

Q. More than one?

A. Don't remember.

Q. Do you think there were more than one?

A. I do not know.

Q. There were conversations enough upon that subject to make an impression on your mind and memory?

A. Yes.

Q. And from whom did those conversations come?

227 A. No one especially. At the time of death business affairs in the family are usually talked over, and whoever is present hears.

Q. Mrs. Mary K. Campbell was not present at any of those conversations, was she?

A. I remember none, except at the reading of the will.

Q. There was no conversation upon the subject if she was there?

A. Do not remember.

Q. Do you remember any one that was present at those conversations?

A. Only the household.

Q. Mr. Moore there?

A. Do not remember specifically.

Q. Mrs. Moore there?

A. I do not remember specifically who was there on any occasion.

Q. Mrs. Russell there?

A. I do not remember.

Q. That would be the household?

A. Mrs. Russell would not.

Q. Mr. and Mrs. Moore would be?

A. At the time of death these things were talked of, and I heard these conversations.

Q. Did you hear these conversation- only at the time of death?

A. I heard them incidentally mentioned at different times.

Q. You must excuse me for asking you these questions; it is my duty to do so. Do you know of any reason occur-ing after
228 the date of her will for your grandmother's making any change in the disposition of her property between her two daughters and the children of her deceased son, any change from the disposition she had made in her will?

A. There was nothing unpleasant that would have induced her to have made any change. I do not know of anything.

Q. You know of no reason?

A. I want to say if there was anything she wanted to do she always made up her mind about it, and thought over her own affairs and came to her own decisions.

Q. Well, she of course made up her mind when she made and executed her will, and, as we have seen, she afterwards anticipated her death by making gifts to her two daughters, there being no gift at the same time made to the orphan children of her deceased son. Now, my question refers as to whether or not anything had occurred that you know of to cause her to change her mind from that disposition of the property she had made in her will?

A. Death of my grandaunt changed the property, you might say.

Q. How?

A. My grandaunt was younger than grandma.

Q. Why, that did not increase the property in anyway?

A. I do not know.

Q. Will you look at that paper and state, if you know, in whose handwriting all the entries in it are?

A. In my grandmother's, Mary I. Campbell.

(This paper is now offered in evidence, it having been already marked with the words "Marked for identification," and it is now marked Exhibit T No. 5.)

Q. In whose handwriting is that?
229 A. Grandma's.
Q. And that?
A. Grandma's.
Q. And that?
A. Grandma's.
Q. And that?
A. That is grandma's, I believe.

(Counsel for the complainants offers all the papers identified as being in the handwriting of Mrs. Mary I. Campbell by this witness in evidence, and they are marked "Exhibits T Nos. 6, 7, 8, and 9.")

Q. About the month of October, and for some months previous to that, the month of October, 1885, what was the state of your father's health?

A. Had his usual health, as I remember. Nothing to impress anything otherwise.

Q. You do not know that he was suffering at that time of any particular trouble?

A. No.

MARY ELLA MOORE.

Counsel for the defendants announces that this closes his testimony-in-chief.

Adjourned by consent of counsel without day.

Subscribed by the examiner by agreement of counsel, the witness having been, before giving her testimony, duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

230 *Defendants' Exhibits to Testimony.*

Filed January 12, 1897.

EXHIBIT No. 1.

I desire to state that the charge which has been brought against my daughter Julia as having in any way, either directly or indirectly, used any influence connected with her father's will *is false in every particular.* Especially with regard to the legacy of $5,000 each to her & her sister, I wish to say that it was done at my suggestion, without the knowledge of either of them, I knowing as I did that our son had received considerably more than either of his sisters; we did it in justice to them, and even this amount did not make them equal to him, as the books now show $6,897.62, more than they received.

I wish my dear children to know that the few days my Heavenly Father may permit me to remain in this "vale of tears" it shall be my endeavor & sincere prayer that we may live in peace and love,

& that when I am gone they may strive to do the same, and that we may appear upon the throne a family chain not one link missing.

M. I. CAMPBELL.

231 EXHIBIT No. 2.

WASHINGTON CITY, *June 17th*, 1882.

DEAR JULIA: As you sent my last letter to Ginnie Moore to read and as she places the same construction upon it as you do, I write again. It was my intention to have conveyed to your mind that we had exonerated you, and regretted the story had been told upon you. I am *just* even in injustice, and would never injure you, either by word or deed. As soon as I felt you had been falsely accused, I began to make reparation by showing your mother's statement. The charge against you reached me before your father's death. The crime was so great that I could not believe you guilty, so doubted the accusation until the will was read. I then believed, seeing the change had been made *after* your brother's death. I told you what I had heard at that time; *then* it should have been inquired into and satisfactorily settled. I now know how I am regarded by your family. All have turned against me, but I am firmly supported by the consciousness of my own *truth*, *integrity*, and *honor*.

MARY K. CAMPBELL.

EXHIBIT No. 3.

GEORGETOWN, D. C., *October 5th*, 1885.

Received of Mess. Alexander W. Russell & F. L. Moore, executors estate of Wm. H. Campbell, deceased, one U. S. 4½ per
232 cent. bond for five thousand dollars, eight U. S. bonds, 4 per ct., for one thousand dollars each, making in all thirteen thousand dollars, being balance in full for balance due me for estate of Wm. H. Campbell.

(Signed) MARY I. CAMPBELL.

EXHIBIT No. 4.

I, William H. Campbell, of the city of Washington, in the District of Columbia having heretofore made my last will and testament in writing bearing date the 16th day of March 1878 (as will more fully and at large appear from the aforegoing witnesses), being now desirous to make a slight alteration therein, do therefor make this my codicil thereto; and since the execution of my said last will, my beloved son Leonidas C. Campbell named in said will as one of the executors thereof has died I do therefore by this my said codicil constitute and appoint A. B. & C. executors of my said last will and testament, in lieu of the persons therein named as executors thereof; but any other matter or thing in said last will and testament contained I do hereby reaffirm, republish, ratify, confirm and continue.

In testimony whereof I have hereunto set my hand & seal this — day of —— 1878.

[SEAL.]
WM. ——.

Signed, sealed, published & declared by the above-named William H. Campbell as and for a codicil to his last will and testament in the presence of us who at his request and in his presence and in the presence of each other have hereto subscribed our names as
233 witnesses thereto this — day of September, 1878.

C. A. JAMES.*
EUGENE MORGAN.*
CHAS. W. BLAS.*

All the above witnesses in the Bank of Washington.*

MEMORANDUM.—Of the witnesses of my will & codicil now in my box in safety bank—C. A. James, Eugene Morgan, Chs. W. Blarey, all in Bank of Washington, this date.

Will dated March 16th, 1878.

Codicil, Sept. 7th, 1878.

Executors: Frederick L. Moore, Alex. W. Russell, Jourdan W. Maury.

EXHIBIT No. 5.

GEORGETOWN, D. C., *Oct. 6th*, 1885.

I have today voluntarily, without suggestion from any one, given to my two daughters the 4½ and 4 per cent. United States bonds coming to me from the estate of my husband, amounting to
234 thirteen thousand dollars at par, thus equaling their share with the amount received by their brother and his family.

MARY I. CAMPBELL.

EXHIBIT No. 6.

GEORGETOWN, *Nov. 23rd*, 1885—Monday morning.

DEAR MR. MOORE: Many thanks for your kind letter, with enclosure, which I signed & gave to Julia for Mrs. Russel, as she will write to Ella today.

With a mother's love, say to my dear child that she has been on my heart & mind all the time, commending her to the care & support of our Heavenly Father, who gives strength according to our day. We will return him grateful hearts for all his goodness and trust him for the support she may still need & to restore her to us again with the blessing of good health, and may our lives, which he has made his care, be more devoted to him.

Julia is going about doing good daily; is so much engrossed with her bazaar that I fear she will not be able to answer favorably to your suggestion, which I think is a good one.

[* In pencil in copy.]

You know the furnace does not answer expectation, so Julia had the sheet-iron stove put in my room, which makes it very comfortable. Indeed, everything is pleasant. Julia & Robert are as kind as they can be, & I shall miss the dear children when I leave.

The Thanksgiving services are to be blended with the Wednesday evening meeting & a collection taken up for Mr. W. Home. Julia says, tell father that John Smoot died in S. Carolina last week. May I trouble you to enquire about my "Observer" of the 19th of Nov. Yours & Julia'- came, but mine did not. Dr. Peter called this morning to enquire after dear Ginnie. He told Julia that Wm. Henry Dodges's baby arrived a few days ago, but she was dangerously ill, but is comfortable now.

Julia joins me in love to you both.

Yours with sincere affect., M. I. CAMPBELL.

EXHIBIT No. 7.

PHILADELPHIA, *Nov. 26th*, 1890.

DEAR MR. MOORE: I am about to anticipate, but better too early than too late. I have usually sent my poor friend, Mrs. Laura Baker, a gift a few days before Christmas. Please send her forty dollars (40) between the *first* and the *tenth* of Dec.

You will also please constitute Mr. Dickson a life member of the Bible society by the payment of $30.

His address· Rev. James Stewart Dickson, pastor of Woodland church, West Philadelphia, 42nd street. Let the certificate reach him a day or two before Christmas.

As I don't expect to write again soon, will make all my requests now for Christmas; hope it won't br-ake my bank. Remember Mollie's family and Ginnie's; don't forget the cakes for the aged women. I have enough for Julia's family. Give Ella one dollar for blind woman.

May *our* thanksgivings ascend not only tomorrow, but daily, for the many mercies we are receiving from our Heavenly Father. Why am I permitted to enter my 90th year with so few of the painful infirmities of old age?

Sincerely yours, M. I. CAMPBELL.

DEFENDANTS' IDENTIFICATION No. 1.

PHILADELPHIA, *March 8th*, 1887.

DEAR MR. MOORE: I am sorry that I was not more explicit when speaking with Mr. Russell about the $500. My idea was simply to know if I could get that amount, say, two months hence, as I expected it would come from something outside of my income, knowing there would be considerable expense for taxes, repairs, & agency; then I would have left part of the amount in your hands, as I wish you to dispose of a portion for me occasionally. Received endorsed bill yesterday.

Now, I wish to say that at Christmas I gave Mr. Russell a watch which cost $125, and would have given my other son-in-law the same amount in greenbacks, but my bank threatened suspension about that time, which denied me the pleasure. You will
237 now accept a check for the amount, with best *best* wishes for a happy Christmas. Better late than never.

The check for $30 is for Virgie's membership to B. society; hope they will send her a certificate early. Well, suppose I had better begin soon to bring my 4 little boys & 4 little girls into this fold. Mr. Russell has just come from bank, where he deposited $300, and I send you one check for the whole amount.

With love to all, from yours truly,

M. I. CAMPBELL.

DEFENDANTS' IDENTIFICATION NO. 2.

PHILADELPHIA, *Aug'st 27th*, 1883—Monday morning.

DEAR MR. MOORE: I received your kind letter several days ago, and, learning that you would not be home until tonight, delayed replying until now.

Am glad you have made arrangements by which I can accomplish my desire to give each of my daughters one thousand dollars without disturbing the estate. Whenever it will suit your convenience to do this it will answer my purpose.

I had a letter from Ginnie on Thursday from Rockbridge Springs; suppose you left her & Ella at Oakland, where I hope they will leave their hay & malerial fevers.

A letter from Julia spoke of her children having measles; hope they are doing well. On account of their sight they ought to be kept in a dark room, as this disease affects the eyes very un-
238 favorably. We had a *pop* call from Willie on Friday; did not think he would leave home so early; you must miss him very much; hope you don't stay in the house at night alone, as you might be sick.

Thanks for attention to the package. We are having very cool weather here. I am wearing my heaviest garments.

With love to all, and for yourself "as much as you want," from yours truly,

M. I. CAMPBELL.

P. S.—If you have the "Baltimore American" of Aug'st 20th, please keep it for me, as it has an article relating to the origin of that paper, in which my uncle had an interest.

239 *Testimony in Rebuttal.*

WEDNESDAY, *Nov.* 25, 1896—12 m.

Met, pursuant to agreement, at the office of Mr. H. O. Claughton. Present: Mr. Claughton, for the complainants, and Mr. Chas. H. Cragin, for the defendants Moore and Russell.

Mrs. MARY K. CAMPBELL, having been previously sworn in the examination-in-chief, testified as follows:

By Mr. CLAUGHTON:

(Mr. Cragin, counsel for the defendants, interposes the same objection to this witness testifying, namely, that she is a party complainant to this suit, (*and also*) as to any statement made by the deceased or transaction with the deceased.)

Q. Mrs. Campbell, one of the witnesses examined by the defendants, who was for a long time a nurse of the elder Mrs. Campbell, testified that upon one occasion she saw you in Mrs. Campbell's room, and that Mrs. Campbell called for her money-box and gave you two or three dollars. State whether such an occurrence ever transpired.

A. Never. If she sent me money, it was by check through Mr. Moore.

Q. That did not transpire?

A. No, sir.

Q. Did you go to see Mrs. Mary I. Campbell after her return from Philadelphia the last time?

A. What time?

Q. Did you go to see her the first day after her return?

A. I am not sure that it was the first day.

240 Q. When you did go to see her after her return, did you see any nurse there?

A. Yes; I think it was a woman she brought from Philadelphia. I cannot be positive.

Q. What makes you think so?

A. Well, because—I may be mistaken about it being the one she brought from Philadelphia. I know there was a woman she had before Mrs. Carlisle, nursing her for a time, and I certainly was under the impression that she came from Philadelphia, but I cannot be positive about this nurse from Philadelphia, but there was a nurse who preceded Mrs. Carlisle; maybe that woman is she.

Q. Do you remember whether there was anything in her dress to indicate?

A. No; I do not remember anything beyond the fact that I saw this nurse, and the impression was made that Mrs. Carlisle took her place. She was more reasonable in her charge than the one that preceded her. That is the only impression the nurse made upon me.

Q. You remember Mrs. Baker's examination; she testified that a short time after the death of Miss Eloise Campbell that she was sent for by Mrs. Mary I. Campbell, and she went to see her, and she testified what took place at that visit. Do you know of anybody else besides Mrs. Baker who was present at that time?

A. Yes.

Q. When did you first find that out?

A. Well, I first found it out when this subject was agitated—
241 this suit being brought—but I do not know what time it was.

Q. My question is, when did you first find out that this third person knew of that conversation about which Mrs. Baker testified?

A. After Mrs. Baker testified I found out positively that a third person was present.

Q. There has been filed with the testimony of Miss Ella Moore a statement in writing, purporting to have been written and signed by Mrs. Mary I. Campbell, in respect to her giving the $13,000 worth of bonds to her two daughters, and in that written statement it is said to be for the purpose of making equal the property between her son and these two daughters. Do you know whether Mr. Campbell in his lifetime had given any property to his two daughters?

Mr. CRAGIN: Question objected to.

A. I do.

Q. About what time was it?

A. 1868.

Q. Do you know where the property was located he gave to each of them?

A. Mrs. Russell's house on F street, north side, between 6th and 7th.

Q. What did he give to Mrs. Moore?

A. A farm in the neighborhood of Bethesda.

Q. Have you any knowledge of the value of these respective properties?

(Counsel for the defendants objects to going into anything that Mr. William H. Campbell did in his lifetime; what he said or what he did in his lifetime.)

A. Twelve thousand dollars, I think.

(Counsel for the complainants now offers in evidence cer-
242 tified copies of two deeds conveying the property mentioned, and they are marked Exhibits T Nos. 10 and 11.)

Mr. CRAGIN: This is objected to.

Q. Do you know if anything, about the same time, was given to your husband, Leo, by his father, William H. Campbell?

(Question objected to by Mr. Cragin, counsel for the defendants.)

A. Yes.

Q. Do you know whether or not the elder Mr. Campbell did any-

thing to equalize the gifts to his two daughters of these two pieces of real estate and the stock of goods to your husband?

A. He made his son pay notes to the amount of about $4,000 or $5,000, payable at intervals, of $500. I am particularly impressed with that fact because I paid one of the notes for $500.

(Counsel for the defendants states that this question and answer are subject to the same objection already made.)

Q. There has been considerable amount of testimony, Mrs. Campbell, with respect to the strong will of Mrs. Mary I. Campbell—so strong as not to be influenced by her daughters. Do you know of your own knowledge of any case in which they did influence her will?

A. After her return from Philadelphia, I remember that they exercised that influence in regard to Miss Mason.

(Question and answer objected to for the reason that it should have been introduced in the examination-in-chief.)

Q. What was that?

A. Well, Miss Mason asked Mrs. Campbell for money.

(Objected to by the counsel for the defendants.)

243 Miss Mason asked Mrs. Campbell for money to repair her father's grave, and Mrs. Campbell had no money about her and asked her granddaughter, Ella Moore, to lend her three dollars, which she did; and when I went, in the afternoon, to see Mrs. Moore she was very indignant at the request, and Mrs. Campbell turned to me and said, Mary, I am afraid you have been imposed upon by Miss Mason. She is an impostor; and before that Mrs. Campbell had befriended Miss Mason.

Q. Did she befriend her afterwards?

(Question objected *by* by counsel for the defendants.)

A. Never gave her anything after that.

Q. State if you know in what instances Mrs. Mary I. Campbell befriended Miss Mason.

(Question objected to by counsel for the defendants.)

A. Yes; she repeatedly did at former times. She wanted to put her in the home for the aged—Women's Christian Home, I think it is, up on 13th street. She was very kindly disposed towards her.

Q. How do you know that?

A. Because she wrote to me and asked for some assistance from me for her, Miss Mason. Mrs. Campbell said that if I would do so much she would do the balance.

(Objected to by counsel for the defendants.)

No cross-examination.

MARY KENNEDY CAMPBELL.

Subscribed by the examiner by agreement of counsel, the witness having been duly sworn in accordance with law.

R. F. DOWNING,
Examiner in Chancery.

244 *Eliza Burgess Baker.*

ELIZA BURGESS BAKER, a witness on the part of the complainants, being duly sworn by the examiner, deposed as follows:

Q. Please state your name, age, and residence.

A. Eliza Burgess Baker; age, 27; residence, 1932 15th street N. W.

Q. Did you know Mrs. Mary I. Campbell in her lifetime?

A. Yes, sir.

Q. Were you ever at her house or at Mrs. Moore's house while she was living there?

A. Yes, sir; with my mother.

Q. Please state the circumstances under which you went the first time to see Mrs. Campbell with your mother.

A. After the death of Miss Eloise Campbell my mother got a letter from Mrs. Mary I Campbell——

Mr. CRAGIN: Do you know that?

The WITNESS: Yes, sir; I saw the letter.

(Objected to by counsel for the defendants.)

She asked my mother to come to see her, and she told her when she got there that she had divided the money that Mr. Campbell had left for the support of his children between Mrs. Russell and Mrs. Moore, as they had made her promise to do, and they worried her so she did it to prevent being worried.

(Counsel for the defendants objects to this evidence on the ground that it should have been introduced in the examination-in-chief.)

245 Q. Was there anything that transpired at that visit to impress it upon your mind?

A. Yes, sir; Mrs. Campbell gave my mother some clothes that belonged to Miss Eloise.

Q. Can you tell about what time that was, as respects the death of Miss Eloise?

A. Well, as near as I remember, it was within two or three weeks of Miss Eloise'- death; it was very shortly afterwards.

Q. State whether you were at Mrs. Moore's to see Mrs. Campbell with your mother after that.

A. Yes, sir; I was there after that, before Mrs. Campbell went to Philadelphia.

Q. Do you remember any conversation that Mrs. Campbell had at that vistit with your mother?

A. Yes, sir; when my mother went into the room she told her to come close to her, and to listen to what she had to say and not to answer, for there was always some one listening at the door. She

told her she was going to Philadelphia to live with her other daughter; that Mr. Moore and Mrs. Moore treated her unkindly; that neither wanted her there, and that she was afraid of Mr. Moore, and she hoped she would be happier in Philadelphia than she had been there. I should have stated also that she wrote to my mother to come before she went, and told her in the letter she had something to tell her.

(This testimony is objected to by Mr. Cragin, counsel for the defendants.)

And while the old lady was telling her the tears were rolling down her face, and then when we went downstairs Mrs. Moore asked my mother if her mother had been talking against
246 the Moores; that if she had, not to mind her, for she was in her dotage, and that she went around the neighborhood talking about them.

Q. Did you see Mrs. Campbell after she returned from Philadelphia?

A. Yes, sir; once.

Q. Do you remember any circumstances about that visit particularly?

A. She was very childish then.

Q. What fact do you remember that indicated that she was childish?

A. Well, she gave me little picture books for the children to look at, and talked to me as if I was about so big. Told me how I had grown.

Q. How old were you then?

A. Just about 24, I think.

Q. How old were you, prior to her going to Philadelphia, at the time of the first interview you had with your mother?

A. I was in my 16th year. It was 1885. I was 16 years old.

Cross-examination:

Q. Miss Baker, your mother knew all that you have testified to just now all the time, didn't she?

A. Yes, sir; I believe so. She certainly knew it at the time.

Q. How did you happen to be called to testify just now, at this time?

A. Because I did not mention to any one that I knew about it until I heard that my mother made mistakes in her evidence.
247 I have never been in a case of this kind before. I had never been in a law case, and I did not want to be drawn into it unless it was absolutely necessary to corroborate my mother's statement.

Q. But your mother knew what you have testified to just now when she gave her testimony?

A. She ought to have known it if she remembered.

Q. Did she hear it from you?

A. No; she did not hear it from me. She heard it from Mrs. Mary I. Campbell.

Q. Have not you and your mother talked this matter over repeatedly?

A. She has spoken of being down here to testify many times, but she did not know what I had to say.

Q. Have not you and your mother talked these matters over repeatedly to each other?

A. Of course, naturally she spoke of it.

Q. Your mother knew everything you testified to just now when she testified?

A. I could not say whether she knew it then, because I did not know what her testimony had been. I did not know what she had testified to.

Q. She knew all you have testified to?

A. At that time; yes, sir.

Q. Now, how many interviews did you have with your mother at Mrs. Campbell's?

A. You mean how many I heard my mother and Mrs. Campbell had?

Q. You went with your mother two or three times?

A. I went to Mrs. Moore's with my mother twice—three times, including the visit we paid after Mrs. Campbell returned from Philadelphia.

248 Q. The first visit you made took place when?

A. As near as I can recollect, within two or three weeks after the death of Miss Eloise Campbell.

Q. How do you recollect it was two or three weeks?

A. Because I know that within a month or so—within a month after the death of Miss Eloise—my mother and I were in Georgetown one day, and were going to see Mrs. Campbell, and we met Mrs. Tenney, Mrs. Moore's daughter. She told us that her grandmother was at her house on a visit, and I went there to see her at that time, but that was not at Mrs. Moore's, that was at Mrs. Tenney's, and I know that was but a very short time after the death of Miss Eloise, not more than a month.

Q. Then, if your mother testified that it was from four to six weeks afterwards, she was mistaken in that?

A. I think she was, because it was not longer than two or three weeks.

Q. Then, if she testified also that it was a few months before Mrs. Campbell died, she was also mistaken in that?

A. What do you mean?

Q. If your mother testified that this conversation took place less than a year from Mrs. Campbell's death—a few months, as I remember the testimony—she is mistaken as to that?

A. Yes, sir; that conversation took place before Mrs. Campbell went to Philadelphia.

Q. Now, as I understand you, you were in the room when Mrs. Campbell said all this to your mother?

A. About having divided the money?

Q. Yes.

249 A. Yes, sir. I was.

Q. And she said that Mr. Moore was unkind to her?
A. Yes, sir.
Q. That was before she went to Philadelphia?
A. Yes, sir.
Q. And that she was afraid of Mr. Moore?
A. Yes, sir.
Q. And that they were both unkind to her?
A. Yes, sir.
Q. And she hoped she would be happier in Philadelphia than she was in Georgetown?
A. Yes, sir.
Q. And she was crying?
A. Yes, sir.
Q. Was there any nurse there at all—any maid?
A. I could not say. I do not remember seeing any.
Q. Do not remember of seeing any nurse or maid there at all in attendance?
A. Not at that time.
Q. At neither one of these interviews?
A. At neither one of these interviews; no, sir. I did not see any woman. I do not remember seeing any.
Q. What kind of a lady was Mrs. Campbell, as to truthfulness, do you think?
A. Well, I should say that she was a person who had very strong regard for the truth, as far as I ever knew anything about her, and I knew her up to the time of her death—all my life.
Q. Anything she said you would rely upon it implicitly?
A. Yes, sir.
Q. And if she said she did not say certain things you would rely upon that implicitly?
250 A. Well, if Mrs. Campbell told me a certain thing I would believe it. Whatever she told me I would have believed it.
Q. That is, she was a woman of strict integrity and truthfulness?
A. Yes, sir. I should say so.
Q. I did not understand you to tell me how you came to testify this time here. What have you been doing between the time your mother testified and the time you were called to testify?
A. I have been home. I testified simply to corroborate my mother's testimony; I thought I ought to come here to testify to corroborate my mother's testimony, as that letter had been shown to have been written by Mrs. Campbell, which contradicted flatly my mother's testimony, and I felt that in justice to my mother I ought to testify to what I had heard.
Q. Who made the suggestion to you that you ought to testify to corroborate your mother?
A. I think it was you, Cousin Mary—Mrs. Mary K. Campbell.
Q. When was that?
A. It was either the day, the night of the day, or the next night after that letter had been offered in testimony as evidence.
Q. When you went to see Mrs. Campbell with your mother, where did you always see her?

A. Before she went to Philadelphia I saw her at Mrs. Moore's, in the mansard roof, in the third story. After she came from Philadelphia, she was on the second floor at Mr. Moore's.

251 Redirect:

Q. Miss Baker, Mr. Cragin asked you if you had not frequently spoken with your mother about this testimony. You answered yes. Now, when did you speak with her about this testimony?

A. Well, she asked——

Q. Was it before or after your mother testified here?

A. She would tell me what occurred down here, you know.

Q. Was it before or after?

A. It was after, because she would tell me what had occurred down here, and that is how I came to tell what I knew about it.

Q. Did you have any conversation with your mother about that testimony prior to Mrs. Campbell's death?

A. Why, yes, sir. Why, when my mother would come from Mrs. Campbell's we would naturally discuss the conversation.

Q. I mean subsequent to the time of the conversations and prior to Mrs. Campbell's death.

A. Why, yes, sir.

Q. I knew she had had conversations with Mrs. Mary I. Campbell, and on our way out in the country where we lived then we would naturally talk about what was said.

A. My question is, Mr. Cragin asked you whether or not your mother and yourself had not discussed these conversations. What I want to know is, was there any discussion between your mother and yourself of these conversations subsequently to your talking about them at the time they were made?

A. No, sir.

Q. Up to the period of your mother having testified for the first time?

252 A. No, sir; I do not think there was, except that my mother mentioned what Mrs. Campbell said in the first interview, at which I was not present. I do not remember any time that we discussed it.

Q. You say now that your mother told you what Mrs. Campbell had said at the interview when you were not present.

(Question objected to by Mr. Cragin as hearsay evidence.)

A. My mother had a letter from Mrs. Campbell, asking her to come to see her—that was before the death of Miss Eloise—and she went, and when she came home she told us all at the house that Mrs. Campbell told her (Objected to by Mr. Cragin) that Mrs. Moore and Mrs. Russell had made her promise that if she outlived Miss Eloise she would divide the money equally between them. When my mother came home she repeated that and told you all about the conversation. I remember that discussion distinctly. That conversation was about making Mrs. Campbell promise to divide the money if she outlived Miss Eloise.

Q. Now, you say she told it to you and somebody else?

A. Yes, sir; my cousin, who was there, and my grandma, who has since died.

Q. Who was the cousin that was there?

A. Mr. Brook.

Q. Is he still living?

A. Yes, sir.

Q. Did Mrs. Mary K. Campbell or any of the plaintiffs in this suit who are her daughters know of your having been present at these interviews, or know what you remember with respect to them, until after your mother had testified?

A. They did not know that I had been present—no, sir;
253 but I had told her, Mrs. Mary K. Campbell——

(Objected to by Mr. Cragin as hearsay.)

Let me see, some months before this examination first began I told her I knew something about the case, but unless it was absolutely necessary I did not want to be drawn into it. I did not tell her I was present or what I knew. I simply told her I knew something about it. I did not tell her anything about it. I did not tell her that I was present, but I told her I knew something about it.

Q. You have stated that you called with your mother to see Mrs. Campbell after her return from Philadelphia. Do you know how long after her return it was?

A. No, sir; but it was not very long after she returned. It was within a few weeks after her return.

Q. Did you see any nurse there when you went?

A. Only the one who was in the room when we went in.

Q. Can you describe her dress—her appearance?

(Question objected to as not proper redirect examination.)

A. Not more than that she was dressed in the same kind of dress that I have seen trained nurses dressed in this city, in the hospitals and elsewhere. She had on a cap and white apron, a chequered dress—such as I have seen trained nurses wear.

ELIZA BURGESS BAKER.

Adjourned to meet Tuesday, Dec. 1. 1896, at 12 m.

The foregoing testimony of the witness, Eliza Burgess Baker, was subscribed by the examiner by agreement of counsel, the witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth.

R. F. DOWNING,
Examiner in Chancery.

254 TUESDAY, *Dec.* 1, 1896—12 m.

Met, pursuant to adjournment, at the office of Mr. H. O. Claughton.

Present: Mr. Claughton, for the complainants; Mr. Cragin, for the defendants Moore and Russell.

Thomas Brooke.

Mr. THOMAS BROOKE, a witness on behalf of the complainants, being duly sworn by the examiner, deposed as follows:

By Mr. CLAUGHTON:

Q. Please state your name, age, and residence.

A. Thomas Brooke; 64 years of age; residence, 1932 15th street N. W.

Q. Where did you reside in October, 1885?

A. In Prince George's county, about five miles from here and about a mile from Bladensburg and Hyattsville.

Q. With whom were you residing?

A. I was residing with Mrs. Laura E. Baker and her family. Mrs. Baker was the widow of my first cousin, Clarence B. Baker.

Q. Who was in the habit, if you know, of getting the mail that came from Mrs. Baker's house?

A. I, sir, generally walked over to the post-office. It was my custom to do so generally; there may have been an occasion when I did not do it.

Q. Do you know from whom in the town of Georgetown, about that time, Mrs. Baker received a letter?

A. Mrs. Campbell; Mary E., I think, was her middle name, but I am not positive about what was her middle name.

Q. What was the result of her getting that letter?

A. Went to Georgetown.

255 Q. How do you know she went to Georgetown?

A. Because she said——

Mr. CRAGIN: I object to the question and the answer.

The WITNESS: Because she said she was going to Georgetown, and I think I drove her to the depot—Highland station. She was generally in the habit of going——

(Answer objected — by counsel for the defendants.)

Q. When did she return from that visit, wherever she went?

A. That afternoon in the half-past-five or the train arriving a little after six at Hyattsville station.

Q. Were the family together that afternoon after her return?

A. Yes, sir; always were; sat in the parlor.

Q. Do you remember whether she gave any account of her visit that day?

(Question objected to by counsel for the defendants.)

A. She was in the habit of mentioning—talking about her trip

and her visit—that she had been to Mrs. Campbell's, and in that conversation she spoke of——

Mr. CRAGIN: I object to the answer as to what she told him.

The WITNESS: And in that conversation she spoke of Mrs. Campbell, saying she was very much worried—harassed by her two daughters, Mrs. Russell and Mrs. Moore, about that money. I cannot say that harassed is the exact word she used, but that is the meaning of it—harassed by her daughters continually to divide that money if she outlived Miss Eloise Campbell.

Q. Was anything said about what was the effect of that harassing, if that was the word?

256 (Question objected to by counsel for the defendants.)

A. No, no; I do not know that there was. She spoke of her saying that she had been worried and troubled very much by her two daughters, Mrs. Russell and Mrs. Moore.

Q. Did she say what had been the effect of that worrying?

(Question objected to by counsel for the defendants.)

Q. No; I do not recollect anything of that.

A. Was anything said as to whether she would refuse or comply with the request?

(Question objected to by counsel for the defendants.)

A. No; not in that visit.

Q. Now, do you know of Mrs. Baker paying any other visit to Mrs. Campbell?

(Question objected to by counsel for the defendants.)

A. Yes, sir; she got another letter from Georgetown, asking her to come in, and she did, and her daughter went with her.

(Answer object- to by counsel for the defendants.)

Q. State what took place after Mrs. Baker and her daughter returned from that visit.

(Question objected to by counsel for the defendants.)

A. She said that she had given that $12,000 that was left; that they had worried her so she had divided the money between the two daughters.

Q. Is there any fact that impresses that visit and that conversation upon your mind?

A. Yes, sir.

Q. State what it was.

A. Then she also mentioned—she said she was living too long for the family, for her daughters; any one as old as she was
257 in the way—she was living too long for them.

(Answer objected to by counsel for the defendants.)

Q. Mrs. Baker bring anything with her when she came home?

A. Mrs. Campbell gave her some clothes, which she brought out with her. What they were I do not know.

Q. Do you know of any other occasion in which she went to see Mrs. Campbell?

A. Yes, sir; the third time, a third letter was written to her——

(Question and answer objected to by counsel for the defendants.)

Her daughter went with her on that occasion, and she gave her some furniture she was speaking of.

Q. Do you know anything about the furniture?

A. Yes; I know that it came there because Mrs. Baker sent to me to bring it out. How we got it out I do not recollect, but it was all brought out, and my recollection is we sent some one to bring it out. It came, and I stowed it away in an outbuilding.

(Question and answer objected to by counsel for the defendants.)

And there it remained. I do not know what disposition the family made of it. I think there were three beds.

Q. Was there anything said about that visit by Mrs. Baker?

(Question objected to by counsel for the defendants.)

A. Yes, as it was her habit of talking with the family after her trips, and particularly her visit to Mrs. Campbell—always
258 visited Mrs. Campbell. At that time, in the first visit, my aunt was alive—her sister-in-law. Of course, she naturally inquired. She spoke then that she had given it—that Mrs. Campbell told her that she had divided that money between Mrs. Moore and Mrs. Russell.

(Question and answer objected to by counsel for the defendants.)

Q. Who is the person you say was alive then?

A. My aunt; she was related to Mrs. Campbell; she was her sister-in-law.

Q. What was her name?

A. She married John P. Ingle, who was Mrs. Campbell's brother. He married my aunt, and my aunt lived with us at that time.

Q. When did you- aunt die?

A. She died in '86. Eight- of June, think.

Q. Did Mrs. Campbell know anything about her death?

A. Mrs. Campbell was then in Philadelphia, and I went to Hyattsville and telegraphed the announcement of her death to Mrs. Campbell.

Q. Do you know how long Mrs. Campbell had been in Philadelphia?

A. No, sir; I do not know. Mrs. Baker was the widow of my first cousin, Clarence B. Baker. THOMAS BROOKE.

Adjourned at the request of counsel for the plaintiffs to Dec. 3, 1896.

Subscribed by the examiner by agreement of counsel, the witness having been first duly sworn in accordance with law.

R. F. DOWNING,
Examiner in Chancery.

259 THURSDAY, *December* 3, 1896.

Met pursuant to adjournment, and, at the request of counsel for the plaintiff-, adjourned to Dec. 7, 1896.

MONDAY, *Dec.* 7, 1896.

Met pursuant to adjournment, and, at the request of counsel for the plaintiffs, adjourned to meet Dec. 9, 1896.

WEDNESDAY, *December* 9, 1896.

Met pursuant to adjournment, and, at the request of counsel for the complainants, adjourned to Dec. 12, 1896.

SATURDAY, *Dec.* 12, 1896—12 o'clock.

Met, pursuant to agreement, at the office of Mr. H. O. Claughton.

Present: Mr. Cragin, for the defendants Moore and Russell, and Mr. Claughton, for the complainants.

The plaintiffs offered in evidence a letter signed by Ginnie C. Moore and Mary I. Campbell, dated the 12th day of September, 1883, the handwriting of which and the signature are admitted by the counsel for the defendants.

By Mr. CRAGIN: The introduction of this letter in evidence is objected to as immaterial, and for the reason that it should have been introduced in the examination-in-chief.

By Mr. CLAUGHTON: The plaintiffs also offer in evidence a letter written by William H. Campbell, dated Aug. 25, 1876, the handwriting being admitted by the defendants.

260 By Mr. CRAGIN: Same objection.

The counsel for the plaintiffs announces that he has closed his testimony.

The counsel for the defendants also announced that he had closed his testimony.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.* }
vs. } In Equity. No. 17306.
FREDERICK L. MOORE *et al.* }

DISTRICT OF COLUMBIA, *ss:*

I, Rossa F. Downing, examiner in chancery, do hereby certify that in pursuance of an agreement between the counsel on both sides the depositions here- attached were taken down by me in the presence of and from the oral statements of the witnesses, at the times and places herein stated, and after they had been reduced to writing they were subscribed by me, counsel on both sides waiving the formality of signing by the witnesses and of reading the same over to them after it had been reduced to writing, except as to the witnesses Laura Ellen Baker and Mary K. Campbell, whose testimone-in-chief was read over to them before signing by the examiner.

All the witnesses were by me duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause.

261 I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

R. F. DOWNING,
Examiner in Chancery.

261½ Filed February 17, 1897. J. R. Young, clerk.

In the Supreme Court, Dist. of Col'a.

TOWSON *et al.* *vs.* MOORE *et al.* } No. 17306. Eq.

Objections to the competency as witnesses of F. L. Moore, Alex. W. Russell, Mrs. C. V. Moore, and Mrs. Julia Russell are hereby expressly waived.

H. O. CLAUGHTON,
Of Counsel for Comp'ts.

Febr'y 17, 1897.

262 *Decree Dismissing Bill with Costs.*

Filed Mar. 8, 1897.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.* *v.* FREDERICK L. MOORE *et al.* } In Equity. No. 17306, Docket 40.

This cause came on to be heard at the last term and was argued by counsel; and thereupon, upon consideration thereof, it is by the court, this 8th day of March, 1897, adjudged, ordered, and decreed that the bill of complaint be, and the same is hereby, dismissed with costs.

A. B. HAGNER,
Associate Justice.

BLANCHE TOWSON *et al.* *vs.* FREDERICK L. MOORE, CHRISTIANA V. MOORE, *et al.* } Equity. No. 17306.

The clerk will please enter an appeal for the plaintiffs from — in this cause and issue citation to all the defendants.

H. O. CLAUGHTON,
Sol. for Pl'ffs.

March 10th, '97.

Appeal as ordered entered, & citation.

By CL'K.

Mar. 10, '97.

263 Filed Mar. 11, 1897. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

BLANCHE K. TOWSON *et al.*
vs.
CHRISTIANA V. MOORE *et al.* } No. 17306. In Equity. 40.

The President of the United States to Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal from the decree of the supreme court of the District of Columbia on the 10th day of March, 1897, wherein Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, committee of William H. Campbell, are appellants and you are appellees, to show cause, if any there be, why the judgment—decree—rendered against the said appellant- should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 10th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

Service of the above citation accepted this 11th day of March, 1897.

CHAS. H. CRAGIN,
Attorney for Appellees.

264 *Memorandum.*

M'ch 23, '97.—Appeal bond filed.

Instruction by Appellee- for Perfection of Record.

Filed March 24, 1897.

In the Supreme Court of the District of Columbia.

TOWSON *et al.*
vs.
MOORE *et al.* } In Equity. No. 17306.

The clerk will insert all original process and return, and if any order appointing a guardian *ad litem* for infant defendants Gertrude Fry and Edith Fry, insert said order.

CHAS. H. CRAGIN,
Att'y for Appellees.

M'ch 24th, 1897.

265 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 264, inclusive, are true copies of originals in cause No. 17306, in equity, wherein Blanche K. Towson *et al.* are complainants and Christiana V. Moore *et al.* are defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, the 7thday of April, A. D. 1897.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 678. Blanche K. Towson *et al.*, appellants, *vs.* Christiana V. Moore *et al.* Court of Appeals, District of Columbia. Filed Apr. 26, 1897. Robert Willett, clerk .

153 FRIDAY, *October 8th, A. D.* 1897.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, Committee of William H. Campbell, Appellants, No. 678.

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry.

The argument in the above-entitled cause was commenced by Mr. A. A. Birney, attorney for the appellants.

TUESDAY, *October 12th, A. D.* 1897.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, Committee of William H. Campbell, Appellants, No. 678

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry.

The argument in the above-entitled cause was continued by Mr. A. A. Birney, attorney for the appellants, and by Mr. C. H. Cragin, attorney for the appellees, and was concluded by Mr. A. A. Birney, attorney for the appellants.

154 BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, Committee of William H. Campbell, Appellants, No. 678.

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry.

Mr. Justice MORRIS delivered the opinion of the court:

This is a suit in equity for an accounting, in which the facts evolved, so far as they are here necessary to be stated, would seem to be as follows:

William H. Campbell, an old resident of the city of Washington, died on May 21, 1881, leaving a will bearing date on March 16, 1878, and thereafter duly admitted to probate, whereby, after certain specific legacies to his three children, all of whom were then living, and an annuity to a sister, Eloise Campbell, he devised and bequeathed all the rest and residue of his estate to his wife, Mary I. Campbell, in fee-simple, with remainder over to his three children, as tenants in common, in the event that his wife should not survive him. Mary I. Campbell survived her husband and took the estate. Of their three children, one, a son, Leonidas C. Campbell, who had

been in partnership with his father in his business, died on August 15, 1878, before his father, intestate, as it would seem, and leaving as personal representatives and heirs-at-law, his wife, Mary Kennedy Campbell, who is made a party to these proceedings as committee of their son, William H. Campbell—but why such committee is not stated—and seven children, of whom there were three now married daughters, the appellants, Blanche K. Towson, Edith G. Graham and Nannie C. Towson; and four other children, the appellants, John C. K. Campbell, Mary L. I. Campbell, William H. Campbell (above mentioned), and a daughter May, who intermarried with Henry D. Fry, and has since deceased, leaving two minor children, Gertrude Fry and Edith Fry, who are made parties to the bill of complaint as defendants, but who seem never to have been served with process, or otherwise in any manner brought into the proceedings. The two other children of the testator, William H. Campbell, survived. Both were daughters, of whom one, Julia, intermarried with Alexander W. Russell, and the other, Christiana, intermarried with Frederic L. Moore. These four, with the minors above mentioned, are the defendants in the cause and the appellees in the present appeal. The will of William H. Campbell is not involved in the present suit, and seems to be referred to only as supposed to throw light on the subsequent transactions.

Mary I. Campbell, the widow, devisee and legatee of William H. Campbell, died on August 6, 1893, leaving a will executed on May 26, 1882, whereby, after some minor bequests not here important to be noted, she left all the rest and residue of her estate to be equally divided in three equal portions between her two daughters the appellees Julia A. Russell and Christiana V. Moore, and the children of her deceased son, Leonidas C. Campbell, and which will was also duly admitted to probate. Mrs. Campbell at the time of her death had reached the advanced age of 91 years. Her last illness was only of three days' duration; and she seems to have remained in the full use of her mental faculties and in reasonably good physical health and vigor, with no more than occasional petty ailments and the natural decrease of strength incident to old age, almost to the last.

Frederic L. Moore and Alexander W. Russell, her two sons-in-law, were the executors of the will of Mrs. Mary I. Campbell, with power to dispose of all the property, real and personal; and they had also been, with Jourdan W. Maury, the executors of the will of William H. Campbell. The estate of William H. Campbell was duly administered and settled. Of the estate of Mary I. Campbell the executors filed their first and final account on November 23, 1894; and all had been disposed of in accordance with the will, except that one piece of real estate remained unsold, when the bill of complaint in this case was filed on April 16, 1896.

155 Mention has been made of an annuity left by William H. Campbell in his will to his sister, Eloise Campbell. At his death, for the purpose of paying that annuity, his executors set apart U. S. bonds of the par value of $13,000, and kept them intact during the life of the annuitant. She died on October 1, 1885; and the

bonds thereupon became part of the residue of the estate bequeathed to Mrs. Mary I. Campbell, the widow. On October 5, 1885, they were transferred to her on the books of the Treasury Department; and on the next day, October 6, 1885, she made a gift of them, their market value at that time being about $15,000, in equal shares to her two daughters, the appellees Christiana V. Moore and Julia A. Russell. It is the question of the validity of this gift that constitutes the gist of the present suit. It is claimed that the transfer to Mrs. Moore and Mrs. Russell was procured by undue influence exercised by them and by their husbands. But the bill of complaint is filed with the double aspect, either of having the transaction declared void on the ground of undue influence, or of having the gifts construed as advancements, and *pro tanto* as an ademption of the legacies bequeathed to the daughters of Mrs. Mary I. Campbell in her will.

As already stated, the bill of complaint was filed on April 16, 1896; and it sought to charge the executors in the final settlement of their accounts with the value of the bonds in question as having been received by Mrs. Moore and Mrs. Russell on account of their several distributive shares of their mother's estate. The answers of the several defendants, other than the minors, who never appeared in the case, and whose interests, of course, are identical with those of the complainants, fully and emphatically denied all the substantial allegations upon which the bill was based.

After replication filed and testimony taken, the court below, when the cause came on for hearing, dismissed the bill; and from the decree of dismissal the complainants have prosecuted the present appeal.

1. The theory of the bill of complaint that the transfer of the bonds in question by Mrs. Mary I. Campbell to her two daughters, if voluntary, was not intended by her as a gift *inter vivos*, but as an advancement to them on account of their respective legacies under her will, is wholly unsustained by proof of any kind, is flatly denied by the defendants, and is not insisted on in argument before us. It may, therefore, be dismissed at once from our consideration.

2. The controversy really turns upon the question of the alleged undue influence claimed on behalf of the appellants to have been exercised upon Mrs. Mary I. Campbell by her two daughters and their husbands; and upon the determination of this question depends the determination of the cause.

Undue influence, says the Supreme Court of the United States, in the case of Conley *v.* Nailor, 118 U. S., 127, 134, "the undue influence for which a will or deed will be annulled must be such as that the party making it has no free will, but stands *in vinculis*. It must amount to force or coercion, destroying free agency (citing Stulze *v.* Schaeffle, 16 Jurist, 909; Williams *v.* Goude, 1 Hagg. Eccl., 577; Armstrong *v.* Huddleston, 1 Moore, P. C. 478)." In this same connection that court cites with approval the case of Eckert *v.* Floury, 43 Pa. St., 46, and the case of Davis *v.* Calvert, 5 Gill & J., 269, 302, in both of which the same doctrine is laid down in substantially the same language.

Undue influence, itis true, is in general a subtle influence, a species

of fraud, difficult to be proved and difficult to be disproved. In general, its existence can only be established by circumstantial evidence, and by a concatenation of circumstances. The presumption of its exercise does not arise except where an advantage has accrued to a party under conditions of existing fiduciary or confidential relations which make it incumbent on the party to show the fairness of the transaction drawn in question. In general, the burden of proving such undue influence is on the party alleging it. Boyse *v.* Rossborough, 6 H. L. cases, 2; Davis *v.* Davis, 123 Mass., 590; Webber *v.* Sullivan, 58 Iowa, 260; Conley *v.* Nailor, 118 U. S., 135. This burden the complainants undertook in the present case; but we think that they have wholly failed to establish their charge by any sufficient evidence, and that, on the contrary, the evidence in favor of the defendants in disproof of the charge is overwhelming. In fact, if we were wholly to disregard the testimony on behalf of the defendants, we would have to hold, on the showing of the complainants themselves, that they had not proved their case.

Beyond the fact of some unimportant and irrelevant testimony that both William H. Campbell and Mary I. Campbell always intended to treat their children and descendants equally and to divide their estates equally between them, the only substantial testimony on behalf of the complainants, if such it can be called, to establish the charge of undue influence, is contained in the deposition of one of their witnesses, Mrs. Laura Ellen Baker, who testified as follows:

"She (Mrs. Mary I. Campbell) told me that Mrs. Moore and Mrs. Russell had made her promise that, if she was to outlive Miss Eloise Campbell, she would divide $12,000 between them equally, and that they worried her so, to get rid of them she promised them."

"After her death (the death of Eloise Campbell) she (Mary I. Campbell) told me she had divided it equally between Mrs. Moore and Mrs. Russell—$12,000, she told me, which she supposed her husband had laid aside for the support of Miss Eloise. After she told me she had divided this money equally, she wanted the rest of her money to go to her grandchildren."

Mrs. Baker at first testified that this conversation between Mrs. Campbell and herself occurred within less than a year before Mrs. Campbell's death (which occurred, as already stated, in August of 1893.) Afterwards she returned to correct her testimony, and stated that it occurred about a month or six weeks after the death of Eloise Campbell (which was on October 1, 1885). She testified, likewise, with considerable particularity that the conversation took place in a room in the house of Mr. and Mrs. Moore, with whom Mrs. Mary I. Campbell was then staying.

Notwithstanding that she further testified that, when this
156 conversation occurred, she was alone with Mrs. Campbell, it was sought by the complainants to corroborate her testimony by that of her daughter, Eliza Burgess Baker, who was called in rebuttal to testify that she was present at the time with her mother in the room in the house of the Moores and heard the conversation. A witness, Thomas Brooke, was also called in rebuttal to testify that Mrs. Baker had repeated the alleged conversation to him in or about

the month of October, 1885. Mrs. Mary Kennedy Campbell, the mother of the complainants, also testified to having had the conversation repeated to her by Mrs. Baker "just as soon as Mrs. (Mary I.) Campbell told her," and "a very short time" after the death of Eloise Campbell.

Besides the inherent improbabilities and inconsistencies of this story, it is shown conclusively that no such conversation could have occurred at the time and at the place specified. For it is proved as conclusively as human testimony can prove anything, that at the time of the alleged conversation, Mrs. Mary I. Campbell was not at the house of the Moores; that in consequence of the intended absence of the Moores from the District of Columbia on account of surgical treatment needed to be administered to Mrs. Moore in New York, Mrs. Mary I. Campbell left their house between the 10th and 15th of October, 1885; that she went immediately to reside with their married daughter, a Mrs. Tenney; that she returned to their house when they returned from New York, about the middle of December following; that she remained with them until June of 1886, when they went to Europe, and she went to reside with Mrs. Russell in Philadelphia; that she remained with Mrs. Russell until 1891, when she returned to the house of the Moores, with whom she continued to reside until her death. It is more probable, therefore, that if the alleged conversation between Mrs. Mary I. Campbell and Mrs. Baker took place at all, it occurred at the time first stated by the latter; that is, a little while before Mrs. Campbell's death; and that it may well have been the result of some temporary annoyance or irritation incident to her advanced years and failing health.

Opposed to any inferance of undue influence which might be deduced from such alleged conversation is the deliberate statement in writing of Mrs. Mary I. Campbell on two different occasions. Discontent, it seems, had been engendered in the mind of Mrs. Mary Kennedy Campbell on account of some supposed inequality in the will of William H. Campbell; and some ill feeling had resulted between her and the other members of the family, apparently including also Mrs. Mary I. Campbell, her mother-in-law. But there was some semblance of reconciliation before the death of Miss Eloise Campbell, in 1885, when Mrs. Mary I. Campbell wrote in her own handwriting a statement, one copy of which was sent to her daughter Julia, and one to Mrs. Mary K. Campbell, in which she stated that no undue influence had been used by her daughter Julia in the making of her father's will, as had been charged against her; and that the legacies left to his two daughters in that will did not equalize them with his son, Leonidas; and that the books (presumably the books of the firm of W. H. Campbell & Son) even then, in 1885, showed that the son had received $6,897.62 more than the daughters had received.

Again, on October 6, 1885, the day of the gift which is in controversy here, Mrs. Mary I. Campbell, for the purpose, as it is stated, that there should be some written evidence of the transaction, in view of the discontent previously manifested, wrote and signed a paper, in which she stated that she had "voluntarily, and without

suggestion from any one," given the bonds in question to her two daughters in order to "equal their share with the amount received by their brother and his family."

According to her own testimony Mrs. Mary Kennedy Campbell had knowledge of this gift soon after it was made; and she had in her possession the previously executed statement by Mrs. Mary I. Campbell that the son Leonidas and his family had received $6,897.62 more than either of the daughters; and yet for more than ten years afterwards, and until the filing of the bill of complaint in the present case, the record shows no protest whatever of any kind by her or by any one against the correctness of the statement or the propriety of Mrs. Mary I. Campbell's action, and no investigation whatever of any kind by her to ascertain the facts. The record, on the facts alone, is conclusive against the position and contention of the appellants.

But even if we assumed the truth and entire correctness of the statement claimed to have been made by Mrs. Mary I. Campbell to Mrs. Baker, it would be insufficient, either in law or in fact, to establish the existence of undue influence. The declarations of a testator or grantor, made either before or after the execution of the will or deed, or of the transaction complained of, are not admissible in evidence to show such undue influence although they may be admitted to show mental condition (Venable *v.* Bank of United States, 2 Pet., 7; P. T. R. R. Co. *v.* Stimpson, 14 Pet., 448; Massey *v.* Huntington, 118 Ill., 80); and vested rights should not be overthrown upon any such declarations as are here alleged. They are too insufficient a foundation on which to sustain a charge of fraud or undue influence.

Here was a lady of eminent truthfulness and religious disposition; quite advanced in years, it is true, but conceded even by the complainants to have been in the full possession of all her mental faculties; a person even of vigorous intellect and independent will, and for her advanced years not unduly weak in body; and between whom and her two daughters, according to the great preponderance of the evidence, the most kindly relations existed. In order to show that such a person was the victim of undue influence on the part of the daughters with whom she made her home to the day of her death, some stronger evidence should be adduced than that which is presented in this record. Appropriate to the situation may be cited what the Supreme Court of the United States said in the case of Mackall *v.* Mackall, 135 U. S., 167:

"Influence gained by kindness and affection will not be regarded as *undue*, if no imposition or fraud be practiced, even though it induce the testator to make an unequal and unjust distribution of his property in favor of those who have contributed to his comfort and ministered to his wants, if such disposition is voluntarily made."

But it is needless to pursue the subject farther. It is clear to us that in dismissing the bill of complaint the court below was entirely right; and that, therefore, the decree of dismissal should be *affirmed, with costs. And it is so ordered.*

157 MONDAY, *November 1st, A. D.* 1897.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, Committee of William H. Campbell, Appellants,
vs.
CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry.
} No. 678.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

November 1, 1897.

158 THURSDAY, *November 11th, A. D.* 1897.

BLANCHE K. TOWSON, EDITH G. GRAHAM, NANNIE C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, Committee of William H. Campbell, Appellants,
vs.
CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry.
} October Term, 1897. No. 678.

On motion of Mr. F. H. Mackey, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of one thousand dollars.

159 Know all men by these presents that we, Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary K. Campbell, committee of Wm. H. Campbell, as principal, and Dorsey E. W. Towson, as surety, are held and firmly bound unto Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry in the full and just sum of one thousand dollars, to be paid to the said Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell, Gertrude Fry, and Edith ——, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a Court of Appeals of the District of Columbia,

in a suit depending in said court between Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, committee of William H. Campbell, — a decree was rendered against the said Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, committee of William H. Campbell, and the said above-named appellants having taken an appeal to reverse the said decree in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

BLANCHE K. TOWSON, [SEAL.]
EDITH G. GRAHAM, [SEAL.]
NANNIE C. TOWSON, [SEAL.]
J. C. KENNEDY CAMPBELL, [SEAL.]
MARY L. I. CAMPBELL, [SEAL.]
MARY K. CAMPBELL, [SEAL.]
Committee of William H. Campbell.
DORSEY E. W. TOWSON. [SEAL.]

Sealed and delivered in the presence of—
F. W. GRAHAM.

Approved by—
R. H. ALVEY, *Ch. Justice.*

Satisfactory to me—
CHAS. H. CRAGIN,
Sol'r for Appellees Moore & Russell.

[Endorsed:] No. 678. Blanche K. Towson *et al.*, appellants, *vs.* Christiana V. Moore *et al.* Bond on appeal to S. C. U. S. Court of Appeals, District of Columbia. Filed Nov. 11, 1897. Robert Willett, clerk.

160 UNITED STATES OF AMERICA, *ss:*

To Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, committee of William H. Campbell, are appellants and you are appellees, to show cause, if any there be, why the decree

rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this eleventh day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged.
CHAS. H. CRAGIN,
Sol'r for Appellees Moore & Russell.

Nov. 13th, 1897.

[Endorsed:] Court of Appeals, District of Columbia. Filed Nov. 13, 1897. Robert Willett, clerk.

161 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 160, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, Mary L. I. Campbell, and Mary Kennedy Campbell, committee of William H. Campbell, appellants, *vs.* Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell, Gertrude Fry, and Edith Fry, No. 678, October term, 1897, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of November, A. D. 1897.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,726. District of Columbia Court of Appeals. Term No., 198. Blanche K. Towson, Edith G. Graham, Nannie C. Towson, J. C. Kennedy Campbell, *et al.*, appellants, *vs.* Christiana V. Moore, Frederick L. Moore, Julia A. Russell, *et al.* Filed November 23, 1897.

No. 198.

Supreme Court U. S.
FILED
JAN 19 1899
JAMES H. McKENNEY,
Clerk.

Brf. of Mackey, Garland & Garland
for Appr.

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Jan. 19, 1899.

No. 198.

BLANCHE K. TOWSON ET AL., APPELLANTS,

vs.

CHRISTIANA V. MOORE ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

FRANKLIN H. MACKEY,
A. H. GARLAND, and
R. C. GARLAND,
Attorneys for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-13-'99

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 198.

BLANCHE K. TOWSON ET AL., APPELLANTS,

vs.

CHRISTIANA V. MOORE ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

William H. Campbell died May 21, 1881, having made his will March 16, 1878, in which, after certain legacies to his three children, all of whom were then living, and an annuity of five hundred dollars a year to his sister, Eloise Campbell, he devised and bequeathed all the rest and residue of his estate to his wife, Mary I. Campbell, in fee-simple, with remainder over to his three children, as tenants in common, should his wife predecease him. She survived her husband and took the estate. Two daughters, Christiana

and Julia, survived him. His son Leonidas predeceased him August 15, 1878, leaving his widow, Mary Kennedy Campbell, and seven children, three of whom are now married, daughters, and plaintiffs in the bill, viz., Blanche K. Towson, Edith G. Graham, and Nannie C. Towson. Three other children, John C. K. Campbell, Mary L. I. Campbell, and William H. Campbell (the latter appearing by his mother, Mary K. Campbell, as next friend), are also plaintiffs and appellants. A seventh child, Mary, who intermarried with Henry D. Fry, died, leaving two minor children, Gertrude and Edith, who are made parties to the bill as defendants.

Of the two daughters above named of William H. Campbell, Julia intermarried with Alexander W. Russell and Christiana with Frederick L. Moore. They and their husbands, with the minor defendants above named, are the defendants in this cause.

Mary I. Campbell, the widow of William H. Campbell, died August 6, 1893, aged 91 years, leaving a will, executed May 26, 1882, whereby, after some minor bequests, she left all the rest and residue of her estate to be equally divided between her two daughters, Julia and Christiana, above named, and the children of her son Leonidas. Frederick L. Moore and Alexander W. Russell, the husbands of her two daughters, Julia and Christiana, were named by her executors of her will, with full power to dispose of all the property, real and personal. They had also been, with Jordan W. Maury, the executors of the will of Wm. H. Campbell. The estate of Wm. H. Campbell has been duly administered and settled. Of the estate of Mary I. Campbell, the executors filed their first and final account on November 23, 1894, claiming to have disposed of and distributed the estate, except one piece of real estate, which remained unsold. On April 16, 1896, the complainants filed in the supreme court of the District of Columbia this bill in equity, setting out substantially the above facts; and, further, that for the pur-

pose of paying the above-mentioned annuity of five hundred dollars a year to Eloise Campbell, which had been left her by her brother, Wm. H. Campbell, the executors Russell and Moore had set apart $13,000 in U. S. registered bonds, at a then par value of $15,000, and kept them intact during the life of the annuitant. Eloise died October 1, 1885. The bonds thereupon became a part of the estate of Mr. Wm. H. Campbell's residuary legatee, viz., his widow, Mary I. Campbell. Accordingly, on October 5, 1885, they were transferred to her on the books of the Treasury Department, and on the next day—October 6, 1885—she made a gift of them in equal shares to her two daughters, Julia Russell and Christiana V. Moore. While the wills of Mr. and Mrs. Campbell have been alluded to, they are not contested; they are only brought into the case to throw light upon this gift, which the complainants allege by their bill was brought about through undue influence exercised over Mrs. Campbell by these two daughters and their husbands. The bill is framed with a double aspect—either to have this gift of Mrs. Campbell declared void on the ground of undue influence, or that it be regarded as an advancement to the two daughters and *pro tanto* as an ademption of the legacies bequeathed to them by the will of their mother, and the bill prays "that the real estate devised by the said Mary I. Campbell not yet sold may be ordered to be sold," and, secondly, that upon the final settlement of the accounts of the executors, Frederick L. Moore and Alexander W. Russell, the $13,000 of registered bonds may be accounted for at their market value and charged to the said Christiana V. Moore and Julia A. Russell.

To the bill the adult defendants answered, denying all the allegations of undue influence. The interests of the two infant defendants are, of course, identical with the interests of the complainants, and though they have not answered, their interests will be protected by the court.

Replication was filed and testimony taken, and, the case coming on for hearing, the bill was dismissed by the court

in special term, and afterwards this decree was affirmed by the Court of Appeals of the District of Columbia, and from that decree this appeal has been taken.

ASSIGNMENTS OF ERROR.

1. The court below erred in dismissing the bill.

2. The court below erred in not granting the prayer of the bill directing an accounting by the executors.

3. The court also erred in finding that no undue influence had been exerted by the defendants or any of them to procure the gift of said bonds.

THE FACTS AS DISCLOSED BY THE EVIDENCE.

William H. Campbell, the ancestor of the parties in interest, was an old resident of the District of Columbia. He was a devoted husband and father, and his wife, Mary I., joined with him in his desire to treat all of their children as equal participants in the property which he had accumulated during a long life of industry and economy. Accordingly, when, in 1868, he transferred to his son his business and stock in trade, he, at the same time, or nearly so, conveyed to his daughter Julia a house and lot in Washington city (see deed—Rec., 63) worth about $12,000, and to his daughter Christiana a farm of eighty-five acres in Montgomery county, Maryland (Rec., 66), of like value (Rec., 136), and, in order to more perfectly equalize these gifts to his three children, required his son Leonidas to pay to his daughters an amount sufficient to cover the estimated value of the business and stock in trade, which he did by executing notes of hand, which were afterwards paid (Rec., 139).

So, too, when he made his will (Rec., 9), March 16, 1878, we find him, in the very first item thereof, explaining that

his gift to his son Leonidas of household and kitchen furniture, books, etc., left in his E Street house, was made because of his "having provided during my [his] life for my [his] two daughters, Julia Anna C. Russell and Christiana V. Moore, by giving to each of them an *equal amount in value.*"

Then, as a premise to a gift of $5,000 each to his two daughters, we find the following language, showing that he had constantly in mind the equalization of all gifts to his children:

"Having provided for my son Leonidas Coyle Campbell by *establishing him in business* as my successor," &c., * * * "I *proceed* to give and bequeath to my daughter, Julia Anna C. Russell, the sum of five thousand dollars."

And then in the next item:

"I *also* give and bequeath to my daughter Christiana Virginia Moore a *like* amount of five thousand dollars."

He then gives his gold watch and chain to his grandson William, and to his sister, Eloise S. Campbell, an annuity for life of five hundred dollars per annum.

Lastly, to his wife, Mary I., he gives all the residue of his estate in fee-simple if she shall survive him, and if not, then to his said three children, Julia, Leonidas, and Christiana, "in *equal* shares to be apportioned *equally* between them." He provides also that if any one of these children should predecease him that the share of the one so dying should go to his or her children in *equal proportions.*

William H. Campbell died May 21, 1881, leaving a personal estate of $49,000 and considerable real estate. The will was read shortly afterwards at a family gathering (Rec., 26), and was pronounced by Frederick L. Moore and Mrs. Mary I. Campbell "a just will." The uncontradicted evidence on this point is given by Mrs. Mary K. Campbell, the widow of Leonidas, on page 46 of the Record, where she testifies as to a conversation held at that gathering with

Mr. Frederick L. Moore (one of the executors of the will and husband of Christiana, one of the daughters of William H. Campbell and beneficiary under the will) and Mrs. Mary I. Campbell, the widow. The conversation was as follows: He said to me, "Mary, Mr. Campbell's will is a just will." I said, "If it is carried out." He said, "It will be carried out to the very letter." "Mr. Campbell," he said, "was a just man and Mrs. Campbell was a just woman." They then went to Mrs. Mary I. Campbell, and Frederick L. Moore said to her, "Mollie says this is a just will." To which the widow replied, "I am very glad to hear you think it is just. Pa and I tried to do what is right."

With this "just" will fresh in her mind, in which her husband, *with her concurrence*, had endeavored to treat each of his three children *alike*, Mrs. Mary I. Campbell proceeds to make her own will just about a year afterwards. In this will (Rec., 12), after making certain small bequests to various charitable institutions, she gives the residue of her estate, being the property left her by her husband to her two daughters, Julia and Christiana, and the children of her son Leonidas, "*equally* to be divided between them" (Rec., 13), thus carrying out the original intention of her husband and herself that their three children should be *equal* participants in the estate of their parents—a provision which she, as we have seen, had stated to be "right" and "just." Nor is it denied, indeed it is averred by the defendants themselves, that it was always a paramount consideration with these parents that in the distribution of their property among their children or the descendants of those children there should be *equality*. (See the answers.)

At the time of making this will and for a long time afterwards Mrs. Campbell lived at the house of her son-in-law, Frederick L. Moore, husband of her daughter Christiana. He and his brother-in-law, Alex. W. Russell (who had married Julia), were the executors not only of her will, but of

the will of her late husband. He was, moreover, her business man and agent (Rec., 109).

On the death of William H. Campbell the executors of the estate set aside $13,000 in United States registered bonds for the purpose of paying the $500 annuity to Eloise. On the 1st of October, 1885, Eloise died, and this $13,000, under the terms of Mr. Campbell's will, reverted to his widow, who was then 83 years of age and poor in health. Had she died before Eloise or within a few days thereafter these bonds, with the rest of her estate, would have been divided *equally* between the two daughters *and the children of Leonidas.* But this is what happened: On October 5, just four days after the death of Eloise, Alexander Russell came over from Philadelphia, where he resided, and he and Moore caused these bonds to be transferred on the books of the United States Treasury to Mary I. Campbell. Nothing, however, was done *in the orphans' court*, and no record was made there to show a transfer of these bonds. *The very next day*, October 6, Mrs. Mary I. Campbell, who up to that moment had given every evidence of being as "just" as her husband in the *equal* division of his property among their children, transferred these bonds in equal portions to her two daughters, the wives of these two executors, one of whom was her confidential business agent (Rec., 109) and at whose house she lived. The children of Leonidas were thus cut out of any interest in this $13,000 of bonds, conceded to be worth at that time $15,000 in cash, although there was apparently the same kindly feeling towards them on the part of Mrs. Campbell as had existed at the date of making her will.

These facts, without further explanation, present a clear case of persons occupying a close *confidential* and *trust* relation towards a feeble old lady of 83 years profiting by obtaining from her gifts to each of their wives of $7,500—gifts wholly inconsistent with the lifelong attitude of herself and of her husband of treating equally with their own the children of their son Leonidas. As these bonds were

worth $15,000, it is plain that the children of Leonidas were thus cut out of $5,000, which would have come to them by her will had she died before making this gift to the wives of her two executors. She lived, however, eight years longer and died *without having ever told these grandchildren* that she had cut them out of this interest in the bonds. They discovered it only *after her death*, when the executors, who, with their wives, the beneficiaries, *had remained*, during all these years, *silent in regard to it*, disclosed the fact, as they were obliged to do, in their accounting to the orphans' court.

It is plain that under such circumstances, occupying as they and their wives did such a confidential relation towards this old lady of 83 years of age, they cannot be permitted to enjoy this gift at the expense of the children of Leonidas without fully satisfying the court by the clearest and most convincing evidence that the gift was made wholly without suggestion or influence exercised by them upon this old lady, causing her suddenly and secretly, and apparently without cause, to change the lifelong conduct of herself and husband to her grandchildren, who by her will had been made equal sharers with her two daughters in this property.

Adams Eq. (7 Am. ed'n), 184, says:

"And whenever any person stands in a relation of special confidence toward another, so as to acquire an habitual influence over him, he cannot accept from him a personal benefit without exposing himself to the risk in a degree proportioned to the nature of their connection, of having it set aside as unduly obtained" (Note 1, referring to many cases in this country and in England).

In Boyd *vs.* De La Montagnie, 73 N. Y., 498, the court says:

"A court of equity will interpose its jurisdiction to set aside instruments between persons occupying relations in which one party may naturally exercise influence over the conduct of another. * * * Where this relation exists,

the person obtaining *the benefit must show by the clearest evidence* that the gift was freely and deliberately made, and the transaction fair and proper. Story says, 'Hence, the law, with a wise providence, not only watches over all the transactions of parties in this predicament, but it often interposes to declare transactions void which between other persons would not be held objectionable'" (Story Eq. Jur., sec. 310).

Establishing, as we have done, this long confidential relation, the almost absolute control of this old lady by Moore and wife, the burden is shifted upon the beneficiaries to prove, without question, the fairness of the transaction throughout. Equity regards it upon its face with deep suspicion, and those who claim the benefit of it must explain it, so as to withdraw it from that suspicion.

In Couts *vs.* Ackworth (L. R.), 8 Equity, 558, the court says:

"The party taking a benefit under a voluntary settlement or gift, containing no power of revocation, *has thrown upon him the burden of proving that there was no deception or undue influence.*"

In Darlington's Appeal, 86 Pa. State Rep., the court uses this language:

"Constructive fraud often exists when the parties to the contract have a special, confidential or fiduciary relation, which affords the power and means to one to take undue advantage of, or exercise undue influence over the other. * * * A transaction between persons so situated is watched with extreme jealousy and solicitude, and if there be found the *slightest trace* of undue influence or unfair advantage, redress will be given to the injured party. Owing to the near connection between the parties in many relations the transaction in itself is considered so suspicious as to cast *the burden of proof* upon the person who seeks to support it. * * * The master says that there is no evidence that he (her husband) exerted undue influence over his wife to induce her to convey the land. * * * With-

out especially noting the influences of the master, it is enough that there is no *affirmative evidence* that it was the purpose of that woman free from her husband's undue influence to give him the land."

In Maryland the courts have frequently followed the above rule as to the burden of proof.

"It has been often said that this is a salutary doctrine, and the tendency of the more recent decision, no doubt, is to extend its application to all the varieties of relations in which dominion may be exercised by one person over another, and to every transaction whereby he who possesses the influence receives any pecuniary benefit from him who is subject to the influence. The cases in this State are to the effect that a gift obtained where a confidential relation exists, is *prima facie* void and the *burden is on the donee* to establish to the full satisfaction of the court that it was the free, voluntary and unbiased act of the donor."

Brooks *vs.* Berry, 2 Gill, 83.
Highberger *vs.* Stiffler, 21 Md., 338.
Grove *vs.* Todd, 33 Md., 188.
Pairo *vs.* Viskeny, 37 Md., 467.
Cherbonnier *vs.* Evitts, 56 Md., 276.

These cases and authorities show that the burden of proof is upon those who seek to retain a benefit from one occupying a confidential or trust relation, whenever the circumstances suggest the slightest degree of imposition.

But although the plaintiffs might well have rested in showing the foregoing facts, they took upon themselves the burden of showing by affirmative testimony that undue influence was exerted upon old Mrs. Campbell to secure this gift from her.

Mrs. Laura E. Baker, an old and intimate friend of Mrs. Campbell, says (Rec., 40, 41) that on one occasion, a few months before the death of Eloise, she, Mrs. B., visited Mrs. Campbell at the E Street house, where she was then living with her daughter, Mrs. Moore, and that Mrs. Campbell in the course of a conversation told her "that Mrs. Moore and

Mrs. Russell had made her promise that if she was to outlive Miss Eloise Campbell she would divide $12,000 between them equally, and that they worried her so that, to get rid of them, she promised them she would; that she was afraid of Mr. Moore. About a month or six weeks after the death of Eloise, Mrs. Campbell told her that she had divided the money between Mrs. Moore and Mrs Russell."

A strong, but, we submit, an unsuccessful effort was made to break down this testimony by a close and rigid cross-examination of Mrs. Baker. It is not very difficult for an astute and experienced lawyer to so cross examine an inexperienced old lady as to bring about apparently unimportant conflicts in the "corroborative details" of her testimony, especially after a long time has elapsed since the occurrence in regard to which she is testifying; but if the witness is truthful (and no attempt has been made to impeach the character of Mrs. Baker) the salient fact remains. Moreover, Mrs. Baker was corroborated by her daughter Eliza (Rec., 140), who testifies that shortly after the death of Eloise she accompanied her mother on a visit to Mrs. Campbell, and there heard the latter state to her mother that the reason why she had divided this money between Mrs. Moore and Mrs. Russell was "to prevent being worried." At that visit she says that Mrs. Campbell told her mother "to come close to her and to listen to what she had to say, and not to answer, for there was always some one listening at the door." "She told her she was going to Philadelphia to live with her other daughter; that Mr. Moore and Mrs. Moore treated her unkindly; that neither wanted her there, and that she was afraid of Mr. Moore, and she hoped she would be happier in Philadelphia;" * * * that the tears were rolling down the old lady's face while she was telling this; that when she and her mother went downstairs Mrs. Moore asked her, witness's, mother if she, Mrs. Campbell, "had been talking against the Moores; that if she had,

not to mind her, for she was in her *dotage*, and that she went around the neighborhood talking about them."

There is not the slightest ground for attacking the truthfulness of this witness, nor indeed that of her mother, but, of course, the exigencies of the defendants' position force them to assert its falsity, since otherwise they are compelled to concede the plaintiffs' case. In support, therefore, of the truthfulness of this testimony, the plaintiffs called another witness, Thomas Brooke (Rec., 146), who testified that at the time these visits of Mrs. Baker were made to Mrs. Campbell, Mrs. Baker was living about five miles from Washington, in Prince George county, Maryland, about a mile from Hyattsville; that he was residing with Mrs. Baker at that time; that he remembered the visits by Mrs. Baker to Mrs. Campbell in Georgetown, of her taking the train, &c., and of her return, and remembers the conversation had with her on her return, in which she stated that she had seen Mrs. Campbell, and how Mrs. Campbell had spoken of her being harassed by her two daughters to divide the money between them if she outlived Eloise, and he testifies to other matters coincident with this visit and strongly tending to corroborate Mrs. Baker's statement. So that in order to reject the testimony of Mrs. Baker we must necessarily find her not only untruthful, but also her daughter and Mr. Brooke, and yet not the slightest *motive* for their testifying falsely has been or can be suggested by the counsel for the defense.

But the defense seeks to avoid the force of Mr. Brooke's testimony by insisting upon its inadmissibility. This position, however, is untenable.

"Proof of declarations made by a witness out of court in corroboration of testimony given by him on the trial of a cause is, as a general and almost universal rule, inadmissible. To this rule however there seem to be exceptions and that under special circumstances such proof will be received as where the witness is charged with giving his testimony

under the influence of some motive prompting him to make a false or colored statement, it may be shown that he made similar declarations at the time when the imputed motive did not exist. So in contradiction of evidence tending to show that the account of the transaction given by the witness is a fabrication of late date, it may be shown that the same account was given by him before its ultimate effect and operation arising from a change of circumstances could have been foreseen (Robb *vs.* Hackley, 23 Wend., 50; *In re* Hesdra's Will, 119 N. Y., 618, reported in full in N. E., 555, and citations). In order to come within the above exceptions to the rule, it is not necessary, as contended by the appellant's counsel, that there be a direct charge of fabrication. It is sufficient if the impeaching evidence tends to show that the account of the transaction given by the witness is a recent fabrication or was prompted by corrupt motives (*In re* Hesdra's Will, *supra;* Herrick *vs.* Smith, 13 Hun., 446); or where the object of the cross-examination is to show that the testimony of the witness is an afterthought and a subsequent invention (Gilbert *vs.* Sage, 57 N. Y., 639, 640; Wray *vs.* Fredderke, 43 N. Y. Super. Ct. Rep., 335, 340; Com. *vs.* Wilson, 1 Gray, 337, 340). In the case before us it is apparent from a careful reading of the proceedings and evidence, that the object of the question put on the cross-examination of the hospital surgeon with respect to any statement made by George L. Baber when he was brought to the hospital, the cross-examination of the boy, and the defendant's direct examination of its witnesses, all had a tendency and were calculated to impeach the boy's testimony, and to stamp it as an afterthought and a fabrication of recent date; and under these circumstances, and with the authorities above cited, it was proper to show, in answer, that he had previously told the same story."

Baber *vs.* Broadway & S. A. R. Co., 43 N. Y. Suppl., 42.

The text of the foregoing exposition of the rule is fully sustained by—

1 Green. Ev., sec. 469.

1 Phil. Ev., 231.

1 Starkie Ev., 149.

French *vs.* Merrill, 6 N. H., 465.

Stoep *vs.* Blair, 68 Ill., 541.

And see especially the clear and forcible language of the court *In re Hesdra's Will* cited above and reported fully in 23 North Eastern Reporter, p. 555.

THE DEFENCE.

The plaintiffs, as we have seen, needed not the testimony of these three witnesses to establish their *prima facie* case. They did that when they showed the close and confidential relation of these two executors and their wives to this old lady "in her dotage," and the fact that inconsistently with her lifelong course of conduct she had made these wives the recipients of a large bounty at the expense of the children of her only son, who were shown to be, up to that moment, as much the objects of her and her husband's parental solicitude as were these two wives. The moment the plaintiffs presented to the court *prima facie* evidence of such a case, the burden of proof was, as we have seen, at once shifted upon the defendants to establish by clear and convincing evidence the absence of all pressure or undue influence upon old Mrs. Campbell. But the plaintiffs have presented to the court a much stronger case than the one we have just stated. They support it by proof that this most munificent gift of $15.000 in bonds, part of the *corpus* of the mother's estate, which by her will she had already bequeathed equally to the plaintiffs and defendants, was studiously *concealed* from the plaintiffs. Nowhere in the record does it appear, or is it alleged or contended by defendants' counsel that it appears, that the Moores or the Russells, or any one for them, ever communicated the fact to the widow of Leonidas or any of her children that their grandmother had divided these bonds between Julia and Christiana and left out her son's children, and yet at that time they were all apparently on the best of terms. Why was this information withheld, and why was such care taken to get from the old lady a paper to the effect that they had been given freely and without suggestion from

any one? Was it not because they felt that the circumstances connected with this gift required that it should be fortified by a paper evidently on its face written at the dictation or suggestion of some person acquainted in some degree with legal forms? And who could that be but her attorney and business man (Rec., 169), Frederick L. Moore, whose *wife* was one of the beneficiaries of this paper?

To these facts the defence has nothing more to offer than—

1. The allegation of laches.

2. A denial by those who of course must deny or abandon their case.

3. An attempt to pick flaws and show alleged contradictions in the testimony of Laura Baker in its minor and immaterial details.

4. The loving letters of a loving mother to her daughters as proof that she loved them enough to give them these bonds, forgetting that she wrote equally loving letters to the plaintiffs, who were ignored entirely in the matter, even to the fact of informing them of it.

5. The production of a paper alleged to have been written by Mrs. Campbell and professing to give the reason for making the gift.

We shall deal with these defences in their order.

ALLEGED LACHES.

This consists in the charge that the plaintiffs should have brought this action *before* the death of Mary I. Campbell. The only evidence relied upon as proof of the *knowledge* of the plaintiffs in regard to the disposition of these bonds is that Mrs. Laura Baker communicated to Mrs. Mary K. Camp-

bell, the widow of Leonidas, the substance of Mrs. Mary I. Campbell's conversation with her, Mrs. Baker; but this conversation did not relate to the *bonds* at all. The statement was that the two daughters had worried her into agreeing to give them $12,000 after the death of Eloise, and that after her death she had given that amount of money to them. Not a word was mentioned about these bonds, and Mrs. Mary K. Campbell might well have thought it to have been money accumulated by Mrs. Mary I. Campbell herself from the income of the estate of her late husband, and have supposed that it formed no part of the corpus. But it is important to observe that the defendants nowhere show that this knowledge of Mary K. Campbell was ever *communicated* to these plaintiffs, who are the real parties in interest. Mrs. Mary K. Campbell is not a party to the suit, except as committee of a *non compos* plaintiff, and is not one of the legatees. How, then, can the plaintiffs be charged with her knowledge of the facts, even if she had it, any more than they could be charged with Mrs. Baker's knowledge? But, even conceding that they had knowledge, yet parties can be charged with laches only from the *time* they have a *right of action* and no right of action accrued to these plaintiffs until the death of Mrs. Mary I. Campbell. The plaintiffs until her death had no interest in this fund *nemo est hæres viventis*. Had they filed their bill, therefore, in her lifetime a demurrer would have properly lain thereto. There has been no such delay since her death as forms any ground for the charge of laches. The executors had a year in which to settle the estate, and until then a bill could not have been maintained, even supposing the knowledge of these facts came to the plaintiffs during that time.

If the contention of the plaintiffs be well taken, it is plain that there was no necessity to allege in the bill any facts *excusing* laches, since there was no laches. The bill was filed within a reasonable time, considering the number of

the plaintiffs and the necessity of some little time for conference among them and concert of action.

The contention of the defendants that they have lost by *death* the testimony of Mrs. Mary I. Campbell can cut no figure in the case, since it was necessary that her death should occur before the bill could be filed. It is, to say the least, a rather curious contention that plaintiffs should have filed their bill before the *death* of a person in order that the defendants might have had the benefit of her testimony, when *until the death of that person* no cause of action arose. Besides this, the testimony of Mrs. Mary I. Campbell, even if it could be had, is of little importance. She was in her dotage and under the influence of the defendants, and that her testimony would have been colored by that influence there can be but little doubt. It should consequently have had but little weight with the court.

Even, therefore, could this bill have been filed during the lifetime of Mrs. Mary I. Campbell, the failure to do so has worked no injury to the defendants, for her testimony, as we have seen, in view of her great age and the influence she was under, would have entitled it to but little, if any, consideration. It is not contended that any *other* evidence has been lost. There is no *altered* position of the parties. The defendants have not been led to do anything or abstain from doing anything that has put them in a worse position by reason of any alleged delay on the part of the plaintiffs.

"If a party has a clear right in equity with no remedy at law, if it appears that no unconscionable result will follow relief, mere delay in bringing his action will not cause a court of equity to refuse it" (Spurlock *vs.* Sproule, 72 Mo., 503).

"Length of time *alone* is not evidence of staleness" (Paschell *vs.* Hinderer, 28 Ohio St., 568–580).

"Courts in some cases have, notwithstanding great delay, inquired into the equities between the parties, and, where it is apparent that justice could be done, have given relief" (Am. Cyl. and tit. Laches, p. 541).

"When the delay has worked a wrong to the adverse party, who has thereby been induced to do something, or to abstain from doing something, the plaintiff is usually deemed to have precluded himself from relief, and it has been held that *so long as the relative position of the parties is not altered* to the *defendant's prejudice*, delay is of very little consequence" (Am. Cyl. L., tit. Laches, p. 454, citing Nadd *vs.* Powers, 136 Mass., 273; Daggers *vs.* Van Dyke, 37 N. J. Eq., 130; Platt *vs.* Platt, 58 N. Y. 646; Wollaston *vs.* Tribe, L. R., 9 Eq., 44–50; *Ex parte* Adamson, L. R., 8 Ch. Div., 807–817; Ridgeway *vs.* Newstend, 3 De G., F. and J., 474–485; Linsay Petr. Co. *vs.* Hurd, L. R., 5 P. C., 221; King *vs.* Anderson, 1 R., 8 Eq., 625).

In Wollaston *vs.* Tribe, L. R., 9 Eq., 44–50, a bill was brought in 1868 to set aside a marriage settlement executed in 1858 on the ground of fraud and mistake. Lord Romilly, M. R., said:

"Great stress was laid on the lapse of time; but I think nothing of that, because all the persons interested are in the same state now as they were then. If there had been any dealing with an altered state of matters, that might have raised a question, but there is nothing of that sort."

In *Ex parte* Adamson, James, L. J., 807, 817, said:

"Nobody ought to be estopped from averring the truth or asserting a just demand unless by his acts or words, or neglect his now averring the truth, or asserting the demand, would work some wrong to some other person who has been induced to do something or to abstain from doing something, by reason of what he has said or done."

"Where a delay of thirteen years had occurred but the evidence in support of the claim was *entirely documentary*, and there had been no *change* in the situation of the parties, it was held that mere lapse of time was no bar" (Cranmer *vs.* McSwords, 24 W. Va., 594, 601).

In Daggers *vs.* Van Dyke, 37 N. J. Eq., 130, which was a suit brought to reform a deed, the court said:

"The delay of the complainant in seeking redress constitutes no defense. It is only when the complainant has slept

over his wrongs so long that great and serious wrong will be done to the defendant, that laches constitutes a complete defense. Here the parties are in almost exactly the same position that they were in at the time the wrong for which redress is sought was done, and relief may be given to the complainant without doing any harm whatever to the defendant."

II.

THE DEFENDANTS MUST, OF COURSE, DENY THE CHARGE OF UNDUE INFLUENCE.

It is strenuously contended by the defendants' counsel that the denial by his clients of the charge of undue influence should have great weight with the court. This, we submit, is reasoning in a circle. The issue is undue influence or not. There would have been no such issue if the defendants had not denied the charge. But there is one thing which it will be difficult to deny with plausibility in view of the testimony of Julia Russell, one of the daughters and a recipient of one-half of this gift of $15,000 of bonds. Repeatedly she says, "I always resented any one saying my mother was in her *dotage*" (Rec., 106, 108, 109). This old lady, whose feebleness of mind was so impressed upon those who took interest enough in her to visit her that they felt impelled to speak of it to her daughters, is the woman whom we find placing in the laps of these two daughters, then living with her, $15,000 in United States bonds, in violation of the express language of the wills of herself and husband and of their constant course of conduct up to that time.

EXHIBITS NOS. 1 AND 5 OF DEFENDANTS' TESTIMONY.

Great reliance is placed by the defendants upon these papers. Both of them purport to be signed by Mrs. Mary I. Campbell. The first is not dated, and is said to have been written by Mrs. Campbell to explain away an alleged charge

that Julia Russell had influenced her father to bequeath her and her sister Christiana $5,000 each, when no such bequest had been made to their brother Leonidas. The will of Mr. Campbell sufficiently explains these two legacies. They were bequeathed to his daughters because of his having, as he states, during his lifetime made previous gifts to his son, and these two legacies were, as plainly as if he had said it in so many words, to *equalize* those gifts. That such was their purpose is shown by this paper, Exhibit No. 1, although rather clumsily expressed. Mrs. Campbell says in this undated paper:

"I desire to state that the charge which has been brought against my daughter Julia as having in any way, either directly or indirectly, used any influence connected with her father's will is false in every particular. Especially with regard to the legacy of $5,000 each to her and her sister. I wish to say that it was done at my suggestion, without the knowledge of either of them, I knowing as I did, that our son *had received considerably more than either of his sisters.* We did it in justice to them, and even this amount did not make them equal to him, as the books now show $6,897.62 more than they had received."

This paper was evidently written some years *before* Exhibit No. 5. *Who* gave to this old lady of 83 or thereabouts these figures, $6,897.62? Did she go to the books herself and figure it out? Or did Frederick L. Moore, her business agent and the husband of Christiana, tell her that "the books" showed that difference? It is a remarkable circumstance that the books *were not produced* upon the trial to show the correctness of these figures. We are asked by the defendants to believe, without a particle of evidence to support the assertion, that Mr. Campbell's "books" show that prior to the death of Mr. Campbell Leonidas had received, besides this $6,897.62, $5,000 more in gifts than each of his two sisters, and that this $10,000 was given to them to equalize in part the excess, and, moreover, that it took a

further gift to these two sisters of the $15,000 in bonds ($7,500 to each) to completely equalize it; for that is the inference to be drawn from Exhibit No. 5, which reads as follows:

"I have today voluntarily, without suggestion from any one given to my two daughters the 4½ and 4 per cent. United States bonds coming to me from the estate of my husband, amounting to $13,000 at par thus equaling their share with the amount received by their brother and his family.

"MARY I. CAMPBELL."

Passing for the moment some peculiarities in the origin of this paper, and confining ourselves to the immediate point before us, let us look at the facts:

In 1868 William Campbell turned over his business to his son Leonidas. As this was a gift of considerable value, he about the same time gave to each of his two daughters a piece of real estate (to one a house and the other a farm), and, as he did not consider that this real estate was as valuable as the business turned over to his son, he made that son execute to each of his sisters certain promissory notes to *equalize* them with him. In 1868, therefore, Mr. Campbell considered that he had placed his three children on an equal footing as to advances. Ten years later (March, 1878), as we have seen, he made his will, in which he provided a legacy of $5,000 each for his two daughters. The whole tenor of this will shows (although he did not express it in as definite and express words as he might have done) that he regarded these legacies as putting his daughters upon an equality in respect of any additional provisions he had made for his son since 1868. We have seen also that Frederick L. Moore himself thought the will was a fair one, and that on the day the will was read at the family gathering he was careful to impress that opinion to Mrs. Mary K. Campbell (the mother of complainants) and to inform her that will would be carried

out "to the very letter." But, what is more important, the widow and mother, Mrs. Mary I. Campbell, thought it was a "just" will. She said that she and her husband, in regard to its provisions, "had tried to do what was right" (Rec., 47); yet, if the statement contained in this Exhibit No. 5 is correct, it was not a "just" will, and he did not do what was "right" according to Mrs. Campbell's notions, for, in order to put her daughters on a supposed equality with her son in regard to benefits, she says she gave them this $7,500 each.

Undoubtedly, by requiring his son in 1868 to execute notes to his two daughters for the difference in value between the real estate given them and the business turned over to the son, Mr. Campbell and Leonidas and Mrs. Campbell and the two daughters, we may assume, all considered that at that date equality of benefits had been provided for; yet, according to this paper, in the ten years which had elapsed since 1868 he had given Leonidas $11,687 more than h had given to each of his daughters and had only provided $5,000 apiece for them by his will instead of at least $10,000 apiece, as he could and would have done had he treated them in his lifetime with any such inequality. Undoubtedly, if "the books" had shown such an inequality of affairs, the defendants, in whose possession they were, would have been only too glad to have produced them in order to support the statement made in these two exhibits. The only certain inference to be drawn from their non-production is that they would not have shown anything of the kind, and that Mrs. Mary I. Campbell was either depending upon untrue statements made to her and not upon any books that she had seen, or that the books had been "doctored" to mislead her. The defendants' whole case is based by them upon the truth of this statement that there was not equality by about $15,000 at the time of the making of Mr. Campbell's will, or, if they will have it so, at the time of his death, and *that the books show it*," and yet they make no attempt to show it" by the books, or even, as we have seen, to *produce*

the books. How is this to be explained away except as we have stated? Or it may be *there were never any books* to produce, which is most probably the true explanation. If so, where did this old lady, who her visitors thought to be in her dotage, get the idea that "the books showed" any such figures? Did she mean Frederick L. Moore's books? If so, where did *he* get his figures and why is the matter left in the dark? These are very serious questions, and we submit that in the face of the strong *prima facie* case of the plaintiffs they ought to have been answered.

EXHIBIT NO. 5 BETRAYS WHAT IT WAS DESIGNED TO CONCEAL.

The paper or letter purporting to be signed by Mrs. Mary I. Campbell about the date of this alleged gift and in which she formally asserts that the gift was made "freely, voluntarily," &c., presents a feature in the case strikingly similar to that in Taylor *vs.* Taylor, 8 Howard, 183, in which the donor (a young daughter) had written a letter to her father declaring that her act (in executing a certain deed) was "unbiased by any control whatsoever," and that she was acting of her own free will, dictated by her feelings alone, and unknown to any person, &c., &c.

As in the case at bar, much reliance was placed upon this letter as establishing out of the mouth of the donor herself the free and voluntary character of the gift. The only difference in the two cases, it will be observed, is that the donor in the case cited was a young lady of 23 years of age, and in the case at bar an old lady of 83; both of them, however, were in a sense *in vinculis*—*i. e.*, the beneficiary being the adviser and caretaker of the donor. Let us note the criticism of Mr. Justice Daniel, speaking for the court, in regard to this "overmuch protestation" of the donor, and see whether a similar criticism will not apply to this singular paper purporting to have been signed by Mrs. Campbell. Says the learned justice:

"It seems impossible to resist the evidence furnished by this singular production, that it was a fabrication, *designed to conceal the very facts and circumstances which it palpably betrays.* In the first place, it may be inquired why such a letter should be written, and whether it would be usual or probable in a transaction between persons thus situated [father and child] if dictated solely by an admitted sense of propriety and sanctioned by a willingness of both the parties to it. Can we accredit the probability of a formal diplomatic communication from a daughter just grown, to her father, residing under the same roof, to justify an act which they both believed it a sacred duty to perform? Again let us look at the declaration here so anxiously and pompously paraded, that, in the act about to be performed by this daughter she 'was unbiased by any control whatsoever; and that, in the *liberty* she was then using, she was acting *by her own free will, dictated by her feelings alone, and unknown to any person,*' and we shall perceive an apprehension, or consciousness of suspicions, which it was believed the simple transaction itself would neither prevent nor allay. Here are the very *clausulæ inconsuetæ* pointed to in Twyne's case, as the sure badges of that which they are intended to hide. Why should this young woman have taken such deliberate pains to declare, and to place as it were on record, a history of her motives, her entire exemption from persuasion, authority, or even advice, in what she was about to do in obedience to affection and a sense of duty? If these had constituted the real incentive to her act, would they have left room for one thought or surmise of dishonor, connected with the objects of that affection and duty? Such suspicions and surmises are rather the offspring of colder calculation, and of the 'compunctious visitings' that wait on contemplated wrong. * * * The tone, the language, the artificial structure of this letter, its familiarity with the terms peculiar to the business of life, all bespeak it, in our judgment, not the production of an inexperienced girl, but of a far more practical and deliberate author. Lastly may be mentioned, with respect to this letter, the care with which it has been preserved, and placed beyond the control of this daughter, *as a prop to a transaction which could not stand alone, and as a means of stilling the murmurings of future complaint;* the very ends for which it at last emerges from its secret recess."

We submit to the court that every word and every point of this criticism applies with equal force to this paper alleged to have been prepared by Mrs. Campbell. So formal a business paper as this, prepared in the technical language of one familiar with legal papers, could not in the nature of things have originated with this simple minded old lady. Frederick L. Moore, the husband of one of the donees, and himself the business agent and adviser of Mrs. Campbell, and at whose house she was living, could have dictated such a paper, and it was to his interest that "a transaction which could not stand alone" should have a "prop" of this sort. If this paper was not the production of his "compunctious visitings," then, in seeking for the *raison d'etre* of this singular document, we must ignore entirely the *interest* which a party may have in its procuration and preservation.

But it is said (Rec., 123) that it was suggested to Mrs. Campbell that she should sign such a paper, because it was feared that some attack might be made by the children of Leonidas upon this disposition of the bonds. This is itself a confession that the gift was a *questionable* transaction and required something in the way of a shield to defend it; but it cannot fail to occur to the simplest minded why it was, if everything was open and above board in the transaction, that the widow and children of Leonidas were kept in ignorance of a matter which concerned them so greatly. Was it because the donees were afraid that these children would convince this old lady of the injustice of her conduct and lead her to remedy the wrong by making for her grandchildren an equal provision? We submit that the defendants have not answered and cannot answer these questions to the satisfaction of the fair-minded.

MRS. BAKER'S EVIDENCE.

Feeling that it is vital to his case to do so, a strong effort is made by defendants' counsel to impeach the important testimony of Mrs. Laura Baker. Plaintiffs' counsel frankly concede that Mrs. Baker was a nervous and inexperienced witness. She was undoubtedly upon the witness stand for the first time in her life, and exhibited the usual "stage fright," if we may call it so, of female witnesses when called upon to testify for the first time. We should not forget, therefore, to make allowance for this in considering her testimony, and should look rather for substance than detail. The salient and important fact in her testimony is that she had *two* conversations with Mrs. Mary I. Campbell, in which Mrs. Campbell stated to her that she had been *worried* into giving this money to her two daughters. If this be true, then the *exact* time when the conversations occurred is unimportant. No witness, however nervous she may be in relating details, would attempt to testify as to *two* conversations, neither of which occurred in point of fact, unless she is *willfully* falsifying, and there is nothing in Mrs. Baker's testimony, or elsewhere in this case, to justify such an imputation in regard to this old lady. Nevertheless, the defense, by the very exigency of their case, are obliged to make this imputation and to seek to sustain it by adroit argument. Let us, therefore, examine Mrs. Baker's testimony a little more closely than would otherwise be necessary. She testified to two conversations with Mrs. Campbell, one of which occurred *before* the death of Eloise and the other shortly *afterwards*. She says it took place when Mrs. Campbell was living at Mrs. Moore's house in a room under the mansard roof. It is conceded that when Mrs. Campbell lived with her daughter, Mrs. Moore, she occupied a room *under the mansard roof*. So that the *place* is identified. It is also conceded that she lived there

until about a period between ten and fifteen days after Eloise's death, when she went to live for a time with her granddaughter, Mrs. Tinney. If, then, the last conversation in question occurred at all it must have been had during this period of ten or fifteen days. Now, Mrs. Baker distinctly reiterates, and emphasizes it throughout her testimony, that she will not be bound by dates, even the dates of the death of friends, but she is equally as emphatic in saying that *whenever* this last conversation occurred, it was held in the room *under the mansard roof* (Rec., 45). She gives it as her best recollection, however, that it occurred "about a month or six weeks after Miss Eloise's death." She was testifying in November, 1896. Miss Eloise died in October, 1885, so that the witness was endeavoring to fix as near as possible the exact time of a conversation which took place about *eleven* years anterior to the time when she was testifying, and she missed it only by about *two weeks or a month*—a trifling error, it certainly must be conceded by everybody; and yet it is because of this comparatively insignificant error as to time committed by a witness who disclaims the ability to give the exact date that the court below would throw out Mrs. Baker's testimony entirely!

But the defendants' counsel claims that he does not rest his charge of falsity (to express it by no stronger word) solely upon the inexactness of the witness as to a date. He insists further that Mrs. Baker testified that at the time of these conversations she was *alone*, whereas the plaintiffs themselves contradict this by placing upon the stand Mrs. Baker's daughter Eliza, who testifies that she was with her mother on both occasions and heard the statement of Mrs. Campbell. Let us therefore look into this serious charge. It is based upon a solitary question put the witness on cross-examination and her answer thereto, the question and answer being as follows:

"Q. Was this [conversation] in the presence of Mr. and Mrs. Moore?

"A. No, sir. I was alone."

Observe, the witness had been catechised for some time when she suddenly has her attention directed to the members of the Moore family by the question, "Was this in the presence of Mr. and Mrs. Moore?" She is not asked "Was this in the presence of your daughter Eliza?" She naturally assumes that her questioner desires to be informed whether any member of the Moore family was present, and apparently with reference to that matter only replies, "No, sir; I was alone," meaning thereby that none of the family was present. It was not a recent occurrence, and unless her mind had been directed pointedly to the fact, it was quite likely that she either overlooked, for the moment, the presence of her daughter, or did not regard the question as referring to her, who at that time was quite young. Yet it is easily conceivable that Mrs. Baker regarded the presence of her child as not incompatible with the statement that she was alone in respect of this conversation with Mrs. Campbell. A mother is asked whether certain adult persons of advanced years (the Moores were then considerably over fifty years of age) were present at a certain conversation. Knowing that they were not present and with her thought diverted to them, she makes no note of her young child, and replies, as she conceives correctly, "No; I was alone." Is not this a rather slender string upon which to hang so heavy a charge as perjury against a mother and her daughter? In point of fact, Mrs. Baker's statement would have been technically inaccurate even had her daughter not been present. She would not even then have been *alone*, for Mrs. Campbell was present, since it takes two to make a conversation. This illustration only shows that witnesses are not "armor clad" against the fine thrusts of ingenious counsel seeking to break down their testimony. For this reason the rules of evidence provide that the witness's *attention* shall be first drawn directly to any matter about which it is proposed to contradict him, in order to afford him an opportunity to affirm or deny intel-

ligently, and with full knowledge of the purport of the question. Had Mrs. Baker been asked, therefore, the direct question whether her daughter was present or not, and she had answered "No; my daughter was not present," the contention of the learned counsel for the defendants would not be as groundless as it now is.

But even if we strike out Mrs. Laura Baker's evidence altogether, that does not help the defendants, for there is still left the testimony of Miss Eliza Baker, who swears *she also* heard the conversation, and states with more detail than her mother just what Mrs. Campbell said. So here are two witnesses without the slightest conceivable *motive* for deliberately perjuring themselves, whose testimony we are arbitrarily asked to entirely disregard as a lie, pure and simple, made "out of whole cloth," for that is the sum total of it. The matter cannot be minced.

We have dwelt more at length upon these two matters than we otherwise would have done had the Court of Appeals not adopted the theory of the defence as to Mrs. Baker's testimony. (No reason was given for rejecting the daughter's evidence.) A course which naturally led to the dismissal of the bill.

Therefore the order and decree of the Court of Appeals in sustaining the judgment of dismissal of the bill by the supreme court of the District should be reversed, and we ask it to be.

Respectfully,

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R. C. GARLAND,
Attorneys for Appellants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 198.

BLANCHE K. TOWSON ET AL., APPELLANTS,

vs.

CHRISTIANA V. MOORE ET AL.

Supplemental Brief for Appellants on the Question of Jurisdiction, etc.

The appellees, on page 6 of their brief, raise the point for the first time that the amount in controversy in this case is not over $5,000. They figure the amount at $4,285.71, and they do this by taking into the account the value of the bonds alone. They were United States registered bonds, drawing, some of them, four and others four-and-a-half per cent. interest (Ex. 5, Rec., p. 134). How much of each does not exactly appear from the record, but it is immaterial, and we shall consider that all of them drew the lower rate. These bonds came into the hands of the alleged donees October 5, 1885. The bill was filed April 16, 1896, an interval of a little over ten years and six

months. During all this period the alleged donees have received from the United States on account of these bonds interest checks amounting to $5,460, which, added to the principal sum, aggregates $18,460. It is conceded that appellants' share of the estate is six-sevenths of one-third. If, therefore, we are entitled to share in these bonds and the interest checks collected by the alleged donees on account of them, our share would be $5,238, even if all the bonds were only 4 per cent. bonds.

But it is said we are not entitled to compute interest. It might be conceded by us that we are not entitled to compute interest *qua* interest, because we do not claim it; but it is quite a different thing from charging a party with *interest* on money wrongfully detained by him, which he would be liable for whether he received it or not, and charging him with *money* actually received by him on account of certain bonds which he wrongfully claimed to own. If these bonds had been retained by Mrs. Campbell, these interest checks would also have been received by her, and would have gone to *increase* the amount of her estate and our consequent share in it by $18,460. This would be still plainer if they had been coupon bonds, and for the purposes of the case it would be immaterial whether they were the one or the other. Let us suppose, then, for a moment that they were coupon bonds, and that the alleged donees had them today with none of the coupons detached, would it be said that if the court declared us entitled to a share in them the appellees would be first entitled to clip off and appropriate these coupons, aggregating $5,460? We apprehend not. Nor would it make any change in our rights if they had already clipped them and turned them into money as they became due. These interest checks, therefore, which were collected by the appellees from time to time and turned into money bore the same relation to the bonds that coupons would have borne. In point of law they are to be regarded as one and the same

thing. The interest checks and the bonds are *together* the *thing* in controversy.

The case in 17th Howard cited by the appellees is not, therefore, in point. The court in that case had referred to interest upon a money demand where the interest is a *penalty* adjudged in the nature of *damages* for the wrongful detention of the money, and being a penalty must be *claimed* before it can be awarded. We might, it is true, have claimed interest upon the money received from these checks from the respective dates of their reception by the appellees, Christiana V. Moore and Julia Russell; but we did not claim it, and it may be that we are not entitled to compute that in the calculation of the amount in controversy; but these interest checks we did claim when we claimed the bonds, for they are a part of the bonds—as much so as would have been the coupons, had they been coupon bonds.

Moreover, while it is true, as a rule, that executors and administrators, or other persons holding advancements for heirs, are not chargeable with interest upon them until the proper time of settlement of the estate has arrived and there is a failure to turn over those advancements, yet when it is shown the party holding those advancements has converted them to his own use, or they have been used by others with the knowledge and acquiescence of the party holding them, then these parties are chargeable with their value and the interest upon them from the time of the conversion: and they are liable in an accounting for the amount they have so received, with interest. That is this case. These bonds were transferred on the 5th day of October, 1885, to Mrs. Moore and Mrs. Russell, and they were worth so much, and now we ask what they have received as interest or what not in this transaction. This is equity, and it is law, and appellants, if their claim is otherwise good, are entitled to this, which will place the amount far beyond the jurisdictional sum mentioned in the statute, as the interest is 6 per cent. and, running from the time of the conversion

of these bonds till the decree in the court below, makes the amount, even in interest, not less than $3,000; and this interest is of right in equity, whether it is specifically claimed in the complaint or not; for, as Lord Coke says, "what is money but the use of it."

The calculation of appellees' counsel, that there is only six-sevenths of a third of the value of these bonds in issue, will not do, if even these bonds were the only matter in demand. There are two infant Fry children. They are entitled to the other one-seventh of a third. They are not complainants, certainly, but then their interest appears clearly on the record; and as they are minors, they will be protected by the court as well as if they were complainants; and when the court orders this accounting asked for herein, they will be awarded their share as if they had been complainants in proper and due form. In a court of equity all interests are looked after and deemed as between the parties, regardless of the fact, technical, whether one or more is complainant or defendant, and if a party having an interest will not be a complainant, he can be made defendant and the suit proceed as well. These are minors, and no one appears for them as guardian or otherwise, but the court will act as their guardian and see they get what is due them, just as if they appeared as complainants in due and legal form, and this of itself overthrows completely the fine-spun calculation that only $4,285.71 are in controversy in this suit.

But even if we are wrong as to all the foregoing views as to the amount in controversy, that does not end the matter. The record shows that the appellants are entitled to *other property* to which, by the dismissal of the bill, they are forever estopped from enforcing their claim.

The sixteenth paragraph of the bill alleges:

"That the estate of the said Mary I. Campbell has not been finally settled; that there remains to be sold by the said executors and trustees very valuable real estate known

as 610 E street northwest, devised to them [the executors] *to be sold* and the proceeds of such sale to be equally divided between the said Julia and Christiana and the said children of Leonidas" (Rec., p. 5).

and then it is prayed:

"That the real estate devised by the said Mary I. Campbell not yet sold *may be ordered to be sold*" (Rec., p. 5).

Following this there is a prayer looking to the accounting for the proceeds.

The sixteenth paragraph of the answer *admits* this sixteenth paragraph of the bill, viz., that the real estate *has not been sold*, &c. Now, then, since this real estate was devised to be sold and the proceeds divided, as was the duty of these executors and trustees to have done, what remedy have these appellants except to *compel* the sale and division thereof through the processes of the court by the filing of this bill If the bill be dismissed, the appellees *may retain this real estate forever*, for the dismissal of the bill is an adjudication that they had either already sold and divided it, notwithstanding their admission that they had not done so, or it is an adjudication that they are not required to sell and distribute the proceeds. This dismissal of the bill, therefore, was a practical denial to the appellants of their interest in the real estate not sold, and it must be conceded that appellants' interest therein, taken with the value of the bonds, far exceeds the amount necessary to give jurisdiction, viz., over $5,000; and this property, by stipulation filed in this case, was worth at the time the bill herein was dismissed at least $10,000, and that stipulation is appended hereto.

Also, on page 120 of the record, Fred'k L. Moore, one of the executors and defendants, estimates the value of this real estate to be fifteen thousand dollars.

FRANKLIN H. MACKEY,
A. H. GARLAND,
R. C. GARLAND,
Solicitors for Appellants.

COPY OF STIPULATION.

"It is hereby stipulated and agreed by and between the parties to this cause, by their respective solicitors, that the real estate described in the bill as No. 610 E street northwest is and was at the time of the dismissal of said bill worth at least ten thousand dollars ($10,000)."

CHAS. H. CRAGIN,
Solicitor for Appellees Moores and Russells.

FRANKLIN H. MACKEY,
Solicitor for Appellants.

No. 198.
Brief of Cragin for Appellees.
JAN 20 1899
JAMES H. McKENNEY, Clerk.
Filed Jan. 20, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 198.

BLANCHE K. TOWSON, EDITH G. GRAHAM, ET AL.,
APPELLANTS,

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

BRIEF FOR APPELLEES, CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, AND ALEXANDER W. RUSSELL.

CHAS. H. CRAGIN,
Attorney for Appellees, Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-14-'99

IN THE

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vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

Brief for Appellees — Christiana V. Moore, Frederick L. Moore, Julia A. Russell, and Alexander W. Russell.

STATEMENT OF CASE.

The bill in this case, *not sworn to*, was filed on *April* 16, 1896, by *some* of the representatives of Leonidas C. Campbell, deceased, who was a son of William H. and Mary I. Campbell, deceased, against Christiana V. Moore and Julia A. Russell (the only surviving children of William H. and Mary I. Campbell), Fred. L. Moore and Alex. W. Russell (the husbands, respectively, of said Christiana V. Moore and Julia A.

Russell), as executors of the will of said Mary I. Campbell, and Gertrude and Edith Fry, the *infant* children of May Fry (born Campbell), deceased, and her husband, Henry D. Fry (the said May being a daughter of said Leonidas C. Campbell), for the two fold purpose:

First, of having the gifts, *inter vivos*, of certain United States registered bonds of the par value of $13,000, made to the said daughters, Christiana V. Moore and Julia A. Russell, by their mother, the said Mary I. Campbell, "on the 6th day of October, 1885" (R., 4), decreed as "*advancements* to her said daughters, respectively, and *pro tanto* an ademption of the legacies bequeathed to them, respectively" (R., 4, 5); or, *second*, to have the transaction declared void, on the ground of alleged *undue influence* (R., 5).

The Theory of the Bill is, in Substance, Briefly:

(Pars. 1 to 4 relating merely to the family history.)

(Par. 5.) That Wm. H. and Mary I. Campbell "*always* declared" that their property should be "*equally* divided" between their three children (R., 2).

(Par. 6.) *That with this understanding in view*, Wm. H. Campbell, on March 16, 1878, made his will, and that the $5,000 he left therein to each of his daughters (the defendants Mrs. Moore and Mrs. Russell) *equalized* any gifts he had *previously* made to his son and his (the son's) family (R., 2).

(Par. 7.) That on May 26th, 1882, Mary I. Campbell made her will—

> "*in conformity to the aforesaid understanding and agreement, and for the purpose of carrying out the terms and provisions of the will of William H. Campbell*" (R., 3).

(Par. 10.) "That a large portion of her income was given to her said daughters by way of advances" (R., 4).

(Par. 11.) That on the "*6th day of October*, 1885," Mary I. Campbell transferred on the books of the Government, to each of said daughters, $6,500 of registered United States bonds, worth about $15,000, then belonging to her (R., 4), and—

(Par. 14.) While—

> "they have no *personal* knowledge of the circumstances under which the aforesaid transfers were made to the said daughters, *that if it be established that the said transfers were voluntary*, then they were *advancements* to her said daughters respectively, and *pro tanto* an ademption of the legacies bequeathed to them respectively, and must be accounted for as such in the final settlement of her estate" (R., 4, 5).

(Par. 15.) That—

> "THEY ARE INFORMED and believe that the said transfers were not the voluntary act of the said Mary I. Campbell; but, so far from being such, were the result of the *undue influence* and importunate and incessant demands of the said Julia A. Russell and Christiana V. Moore, aided and abetted by their respective husbands" (R., 5).

(Pars. 8, 9, 12, 13.) By *innuendo* they also seek to make it appear that the sons-in-law have been guilty of breach of trust (R., 3, 4).

Now, what are the prayers (R., 5, 6)?

They ask that the real estate may be ordered to be sold, and that out of the proceeds—

> "the said $13,000 of registered bonds may be accounted for at their market value and charged to the said Christiana V. Moore and Julia A. Russell" (R., 5), "and that the said executors, *if they shall claim* that the securities appearing upon the inventory of the estate of William H. Campbell and not appearing upon that of the estate of Mary I. Campbell *were sold by them* and reinvested in securities which do appear upon the inventory of the

estate of Mary I. Campbell, they shall, in the accounting to be had, state specifically what securities they sold and at what price and the securities in which they reinvested and what they paid respectively for the same."

ANSWERS OF DEFENDANTS.

The answers of the defendants Christiana V. Moore, Julia A. Russell, Frederick L. Moore, and Alexander W. Russell *deny, under oath,* all of the material allegations of the bill, the first two averring, in reply to the charge of undue influence—*the only one about which there is any testimony offered* (par. 14, R., 27):

"That the transfers of said bonds by their mother to them were made entirely voluntarily and of her own free will and without any request or suggestion even, in any way, by them or either of them, nor, from what their mother had told them, had either of their respective husbands suggested such an act. It was the free, unconditional and unsolicited gift from a mother, then possessed of real and personal property worth nearly $100,000, who was most devotedly attached to her only surviving children, and who was in return, as she well knew, equally beloved by them. The gifts were made even more freely, as these defendants believe, than were the subsequent gifts of $500 each, made by their mother, in the summer of 1891, to the complainant Mary K. Campbell, the widow of her deceased son, Leonidas; as freely as were the gifts of $100 each, made by her to the complainants Blanche, Edith, and Nannie, as well as to her granddaughter, May, since deceased, the children of her said deceased son, upon their respective marriages; as freely and with as much pleasure as were the gifts of $100 each, always made every Christmas, to the said Mary K. Campbell and to these defendants; as freely as were the gifts of thousands of dollars made by their mother to numerous deserving poor persons and to all kinds of charitable and benevolent objects."

"The father and mother of these defendants, as before stated, were most confidential to each other, and

the reason assigned by their mother to them for wishing to give them these bonds, was, that she well knew that their father had in his lifetime given, advanced, and paid out to and on account of his son, Leonidas, in excess of what he had given, advanced, or paid out to and on account of these defendants, his daughters, and beyond the amount of the legacies to them in his will, sums, in the aggregate, fully equal to half the value of said bonds, and that she desired, as an act of justice to them, to thus equalize their shares.

"But they deny that their mother ever, by word or act, regarded or treated these gifts as advancements to her daughters, and *pro tanto* an ademption of their distributive shares under the residuary clause of her will, and to be accounted for as such in the final settlement of her estate; and they are advised that, even if their mother had assigned no reason for these free and voluntary gifts to her daughters, such gifts, so made, could not legally be regarded or considered as advancements under her will to them, and *pro tanto* an ademption of their distributive shares under the residuary clause thereof."

(Par. 15.) (R., 27, 28.) "They deny, as stated by them in the preceding paragraph, that the said transfers were not the voluntary act of their mother; they deny that said gifts were the result of any undue or any other kind of influence, except that of a mother's love for her only children, and, as she declared, an act of justice to them; they deny that there were any importunate and incessant or any other kinds of demands ever made by them or either of them, alone or together, or aided and abetted by their respective husbands, on their mother for anything whatever, or that the relation of their respective husbands, as executors or otherwise, ever gave them any controlling or other undue influence whatever over her, and they deny, from the thorough knowledge of the character of their mother and of their respective husbands, that there was any violation by their husbands, or either of them, of the duties which their mother reposed in them as executors of her said will or otherwise howsoever, though they are informed that the provisions of their mother's will were known to the said executors thereof."

The executors, Frederick L. Moore and Alexander W. Russell, likewise declare (Par. 14) (R., 21, 22):

> "That said transfers were made entirely voluntarily and of her own free will, without any request or suggestion even, in any way, that they ever heard of from either of said daughters (their wives), and certainly without any suggestion whatever from either of these defendants, * * * she well knowing, so she informed these defendants, that her husband had, in his lifetime, given, advanced, and paid out to and on account of his son Leonidas, in excess of what he had given, advanced, and paid out to and on account of his daughters, and beyond the amount of the legacies to them under his will, sums in the aggregate fully equal to half the value of said bonds, and she informed these defendants that she desired to thus equalize their shares."

They also answer fully every other allegation in the bill of which they have any knowledge, and deny under oath every one reflecting in any way upon their management of the estates of both Wm. H. and Mary I. Campbell.

INFANT DEFENDANTS NOT IN COURT.

The infant defendants, whose interests are identical with those of the complainants, *have not been served with process, and no guardian ad litem has been appointed to answer for them* (R., 15, 16, 151).

Jurisdiction.

It will be seen from the prayers of the bill that the whole claim of the complainants is contained in their third prayer (R., 5, 6), previously quoted, and that the first question here to be decided—jurisdiction—has reference solely to the true amount "in dispute," which, "exclusive of costs, shall exceed the sum of $5,000" (act of February 9, 1893).

As the executors do not "claim" that said "securities were

sold by them and reinvested in (other) securities," *but, on the contrary,* they deny such to be the fact, "*said executors not having made said purchases or sales*" (R., 19, 20), the only "matter in dispute" here has reference to the gift of the $13,000 of U. S. registered bonds, which bonds, at the date of their transfer, the complainants allege "were worth about $15,000" (R., 4), and this stated value is admitted to be about correct (R., 19, 26); they certainly were not worth any more than this amount.

We have therefore, *according to the theory of the complainants' bill,* this state of facts: That they, the appellants, being *six* of the *seven* children, or *six* of the *eight* heirs-at-law, of Leonidas C. Campbell, deceased, would be entitled, in the event of the present decree being reversed, to *six-sevenths of one-third* of $15,000, or to $4,285.71, which is certainly *at least* $714 30 less than the amount required by law to give this court jurisdiction.

The only way by which this sum of $4,285.71 could be increased so as to "exceed the sum of $5,000, exclusive of costs," in order to confer jurisdiction upon this court, would be by adding interest on said amount from the date of the gifts, as alleged "advancements," or from the time when these bonds were alleged to have been obtained by undue influence, "Oct. 6th, 1885."

But even if these gifts could legally be construed as advancements, no interest is chargeable thereon. Manning *vs.* Thurston, 59 Md., 218, 224, 225; Moole *vs.* Cutting, same, 510, 523, 524; Osgood *vs.* Breed, 17 Mass., 356, 358, 359; Oyster *vs.* Oyster, 1 S. & R., 422, 425; Hall *vs.* Davis, 3 Pick., 450, 451, 452; Miller's Appeal, 31 Pa. St., 337, 341; Nelson *vs.* Wyman, 21 Mo., 347, 351, 352; Ray *vs.* Soper, 65 Mo., 470, 474.

Again, if the gifts were set aside on the ground of undue influence, in that event no interest either could be allowed, for the complainants do not make any claim therefor in their

bill, and the only prayer in respect to the whole matter being the one just referred to.

As was said by this court in the case of Udall *vs.* Steamship Ohio, 17 How., 17, 18, " When the claim is founded on dollars and cents, whether it be a libel, *a bill in chancery*, or an action at law, the damages must appear to give jurisdiction on the face of the pleading on which the claim is made. *No computation of interest* will be made to give jurisdiction *unless it be specially claimed* in the libel." To the same effect is also the decision in Olney *vs.* Steamship Falcon, same, 19.

Having shown, then, that notwithstanding some innuendoes or insinuations contained in the bill in reference to other matters, that *according to the prayer of the bill, which is the test here*, the setting aside of the gift of $13,000 of United States registered bonds, " worth about $15,000," is the only " matter in dispute," and no interest being allowable thereon *in any event*, it is respectfully submitted—(as the appellants can only claim six-sevenths of one-third of $15,000, or $4,285.71)—that this court is without jurisdiction to re-examine, reverse, or modify said decree of the Court of Appeals of the District of Columbia, and that said appeal should be dismissed.

STALE DEMANDS.

Passing on to the consideration of the case itself, it will be observed that while the complainants *in their bill* (Par. 11) *allege* that this transfer of the bonds took place on " *the 6th day of October*, 1885 " (R., 4), and that the *personal* estate of Mary I. Campbell has all been settled up, *and that there only remains* one piece of real estate to be sold (R., 5), they do not even mention, anywhere, *when she died, or when they were first* " *informed*," *as they say they were* (R., 5), of this alleged fraudulent transaction; but the exhibits which they file with their

bill show what they did not see proper to state, viz., that she died *August 6th*, 1893 (R., 14); and *they offer not a word of explanation as to why they waited till nearly eleven years after the transaction took place, nearly three years after Mary I. Campbell had died, and some two years after her personal estate had all been settled up and distributed* (Nov., 23, 1894) (R., 29–33), before charging the defendants with these alleged frauds.

Badger *vs.* Badger, 2 Wal., 87, 95.
Lansdale *vs.* Smith, 106 U. S., 391, 394.

More about this when I come to analyze the testimony offered by the complainants to sustain the alleged charge of undue influence, and on the subject of laches.

WITNESSES.

Testimony was then taken by the complainants, and *three* witnesses were called and examined to prove the alleged charge of undue influence.

The defendants, in rebuttal, took the testimony of *fifteen* witnesses, and *also offered in evidence several letters and statements, bearing directly upon the matters in controversy, from the said Mary I. Campbell herself.*

The complainants attempted to meet this evidence by recalling one of their former witnesses, and by introducing the testimony of two other witnesses in rebuttal, *so called.*

DECREE.

Upon the hearing of the case before his honor Mr. Justice Hagner, the bill was dismissed with costs (R., 150), quite a lengthy oral opinion being delivered, but no written opinion was filed by the court.

Appeal was then taken by the complainants to the Court of Appeals of the District of Columbia, which court affirmed the decree of the supreme court of said District (R., 153, 159) (11 App. D. C., 377).

ARGUMENT.

Before beginning the examination of the testimony introduced on behalf of the complainants, let me observe how matters stood when this suit was filed, and what they probably had in mind when bringing it:

(1.) Mrs. Mary I. Campbell, who gave these bonds to her two daughters, was dead, and her lips were doubtless *supposed to be forever sealed.*

(2.) Her executors are made parties defendant with these daughters, their wives, so the law will not permit them to say a word in explanation of the true motives actuating the mother in giving her daughters these bonds.

(3.) The daughters themselves, for the same reason, cannot open their mouths as to what their mother told them.

(4.) And from the further fact that these defendants are husbands and wives, another provision of law will *perhaps* prevent them from testifying at all.

(5.) So by waiving the usual oath required to answers in equity, which will prevent the answers from having any weight, the defendants were doubtless supposed to be in about as helpless condition as could be desired, when confronted with such evidence as Mrs. Laura Ellen Baker had told these complainants she would swear to.

The court will certainly, under the circumstances above stated as to the legal restrictions of evidence on our part, require clear, straightforward testimony on the part of the complainants.

"But where there has been a change of circumstances with reference to the parties and the property, *and still more where death has intervened, so that the mouth of one party is closed and those who represent his interests are not in a predicament to avail of the explanations which he might have made,* out of the charities of the law and in consideration of the fact that *fraud is never to be presumed, but must always be proved and proved clearly,* the courts limit very much in such cases the measure of time within which they will grant relief, because the presumption comes in aid of a dead man that he has gone to his account with a clear conscience."

Hammond *vs.* Hopkins, 143 U. S., 224, 273.

That there has been false swearing here, of the most deliberate kind, is beyond dispute. Who, from the evidence, is guilty of perpetrating *this* fraud? For it is impossible to escape the conclusion that either Mrs. Baker and her daughter have told a deliberate falsehood about this whole matter, or that Mr. and Mrs. Moore, Miss Moore, Mr. and Mrs. Russell, and Mrs. Mary I. Campbell have done so. That it is a fabricated story, gotten up by Mrs. Baker, I think the proof demonstrates to a mathematical certainty.

TESTIMONY OF COMPLAINANTS.

Now, let us see, briefly, first, what the evidence is that is adduced by the complainants to sustain their charges of fraud, and for a better understanding of it I shall begin with the second, their chief, witness, Mrs. Laura E. Baker, and in anticipation of the natural inquiry as to who this witness is, I would say that her mother-in-law was the third wife of Mrs. Mary I. Campbell's brother (R., 124), and that she is the "intimate friend," as she states, of the complainants (R., 44). She resides at 1932 15th street N. W. (R., 39) with her daughter, Miss Eliza B. Baker (their next most important witness) (R., 140), and with Thos. Brooke, a cousin (R., 146) (the latter two being their *so-called corroborating* witnesses),

and they all three reside within about six squares of Mrs. Mary K. Campbell—the mother of these complainants—their other witness, who resides at 1302 Rhode Island avenue N. W. (R., 46). *So it will not be a very rash supposition to imagine that all four of them had, before actually giving their testimony, talked this whole matter over most carefully and thoroughly, and that whatever the alleged facts were stated to be they were all known and understood by these witnesses before testifying.*

She is going to tell the court about certain *alleged* conversations she had with Mrs. Mary I. Campbell and Mrs. Christiana V. Moore, in which this old mother accuses this daughter, Mrs. Moore, and her other daughter, Mrs. Russell, aided and abetted by her son-in-law, Mr. Moore, of doing all kinds of mean, cruel things to her, included in which acts was that of worrying her continually "to divide $12,000 between them equally;" and in turn Mrs. Moore is made to accuse her mother of doing mean and contemptible things to her. But an examination of the whole testimony of the complainants will fail to disclose one word about the gift or transfer of any *bonds* whatsoever, the gift or transfer of which is the real object of inquiry by this suit.

Now, in view of what I have called to the attention of the court relative to the rules of evidence binding us, we are certainly entitled to be fully advised of everything that would tend to throw any light on what this witness is stating, in order that we may test its truthfulness.

So the natural inquiries at once suggested are:

(1.) When did this alleged conversation take place?

(2.) Where did it take place?

(3.) Who were present?

(4.) What was alleged to have been stated?

Testimony of Mrs. Laura Ellen Baker (*R.*, 39).

The examination began on Saturday, *October* 24, 1896. What does she swear to?

(I emphasize the principal *pronouns* used throughout this examination, both questions and answers, to show clearly who were *understood* and *indicated*, respectively thereby, *to be present* at these alleged interviews.)

After giving her name (her age is not asked), residence, etc., counsel for complainants asks her (R., 40):

> Q. "Did *you* visit her (Mrs. Mary I. Campbell) for *one or two or three years previous to her death?*" A. "Oh, yes, sir."
>
> Q. "State how frequently during *those* visits *you* did see her." A. "Well, it might have been three months, or it might have been two, or it might have been four. *I saw her two or three or four times a year.*"

Mrs. Campbell went to Philadelphia in June, 1886 (R., 105), returned in May, 1892 (R., 106), and died in August 1893 (R., 106), and as this witness subsequently states that "I only saw her *once* after she came from Philadelphia" (R. 46), she therefore only *saw her once in these last seven years.*

> Q. "What was the degree of intimacy existing between you in your communications to each other; were you intimate or not?" A. "Yes, sir; I think I was *quite.*"
>
> Q. "Have you any recollection of any conversation at any *one* of *these* visits to Mrs. Campbell by *you* in which she spoke of the relations existing between Mrs. Moore and Mr. Moore and herself?" A. "Yes, sir."
>
> Q. "Can you tell how long it was before her death?" A. "It was some time before her death."
>
> Q. "*What do you mean by some time*—some *months* or some *years?*" A. "Some *months.*"
>
> Q. "*Was not as much as a year?*" A. "*Oh, no, sir.*"

1st. So now we have it attempted to be proved by the complainants that this alleged conversation, which she is about to narrate, *took place "not as much as a year" "before Mrs. Campbell's death."* Mrs. Campbell died in August, 1893, and this testimony is all subsequently changed by this witness to "a month or six weeks after the death of Miss Eloise" (Mr. Campbell's sister) (R., 44, 45), which was on October 1, 1885, *a discrepancy of about eight years only*, and we then prove that the Moore residence was closed up and Mrs. Campbell absent therefrom during *that period*, viz., from about "October 10th to December 15th, 1885," and so admitted subsequently by their own witness, Eliza B. Baker (R., 142).

> Q. "Where did you see her, in what part of the house, on *that occasion?*" A. "*I* saw her up under the mansard roof."
>
> Q. "Was that her room?" A. "Yes, sir."

2d. So they undertake to prove, secondly, in the same manner that this alleged conversation took place in Mrs. Campbell's bed-room, *in the story under the mansard roof.*

The evidence conclusively shows that upon her return from Philadelphia in May, 1892, Mrs. Campbell occupied, until her death, in August, 1893, a room on the *second floor*—so admitted afterwards by this witness (R., 46).

> Q. "Then state in your own way what Mrs. Campbell said to you *upon that occasion.*" A. "She told *me* that Mrs. Moore and Mrs. Russell had made her promise that if she was to outlive Miss Eloise Campbell that *she would divide* $12,000 between them equally if she outlived Miss Eloise Campbell, and that they worried her so to get rid of them she promised them."
>
> Q. "If she said anything more on that subject please state all she said." A. "She told *me* that Mr. Moore did not like her; Mrs. Moore did not like her; that she was living too long; that she was in their way. She told *me* that she was afraid of Mr. Moore."

In contrast with such stuff as this I place a letter written by this old mother to this son-in-law, Mr. Moore, *about this very time*, according to the *amended* testimony of this witness (R., 45), dated November 23d, 1885 (R., 134), while she was staying at Mr. and Mrs. Moore's married daughter's ("Julia's") home in Georgetown (Mrs. R. B. Tenney), in which she writes:

"With *a mother's love, say to my dear child* (Mrs. Moore) that *she has been on my heart and mind all the time*, commending her to the care and support of our Heavenly Father, who gives strength according to our day. We will return Him grateful hearts for all His goodness and trust Him for the support she may still need, and to restore her to us again with the blessing of good health, and may our lives, which He has made His care, be more devoted to Him," etc.—closing with—"Julia *joins me in love to you both.* Yours with *sincere effect*, M. I. Campbell."

Another letter, written to him while she was spending a few weeks in Philadelphia, dated August 27th, 1883 (R., 136) (the visit referred to by Mrs. Moore in her testimony (R., 112, 113), the date of which she could not then remember), which is also about the time this witness testifies that the alleged first conversation took place between her and Mrs. Campbell, *in her corrected testimony* (R., 45), closing "with love to all, *and for yourself 'as much as you want,'* from yours truly, M. I. Campbell."

And the testimony of *all* of the defendants' witnesses, and as a single illustration I take that of Miss Blanchard (R., 93):

"She (Mrs. Campbell) has more than once spoken to me of her affection for Mr. Moore, and I know of one occasion that Mr. Moore had been in the room and had bid her good-morning or good-night, she said: 'What a good, good man that is. *I am so thankful for such a son.*' She would speak of them *all* with the *utmost affection.*"

Q. "After *you* left the room of Mrs. Campbell, did *you* see any one else in the house?" A. "Yes, sir; *I* saw Mrs. Moore."

Q. "Did any conversation take place between Mrs. Moore and *yourself at this time?*" A. "Yes, sir."

Q. "State what it was." A. "Mrs. Moore told *me* that that was her way. Had she said anything against them to *me;* if she has not to think anything of it, that she was in her dotage; that she went around the neighborhood *talking to the neighbors against them.*"

Q. "Did she name any one, any particular neighbor?" A. "One *Mrs. Bradley.*"

Q. "Is that the Mrs. Bradley who was just here?" (the first witness examined by them). A. "I do not know, sir. I never saw her."

Q. "She named a Mrs. Bradley, who Mrs. Moore said was the neighbor?" A. "Yes, sir."

In opposition to this I place a part of the testimony of Mrs. Moore (R., 106) on this subject, referred to more fully hereafter:

"Such a conversation did not take place—I never, in my life, heard of my mother saying anything against me to any one; therefore I could not have asked Mrs. Baker not to believe what I never suspected my mother of stating."

And the testimony of Mrs. Bradley (R., 39), *the complainants' own witness:*

By COMPLAINANTS' COUNSEL:

Q. "Did she (Mrs. Campbell) *at any time* complain to you *in any way* about the treatment she had received?" A. 'No."

Q. "Now, did *any one ever* say to you that Mrs. Campbell had made complaints?" A. "Complaints of what?"

Q. "Of Mrs. Moore." A. "No."

Q. "Go on and state anything more that she said." A. "Well, she told *me* afterwards that she had *divided this money* between Mrs. Moore and Mrs. Russell equally."

Q. "Was this in the presence of Mr. Moore or Mrs. Moore?" (*Now note particularly the answer:*) A. "No, sir; *I WAS ALONE.*"

"After she told *me* she had divided this money equally she wanted the rest of her money to go to her grandchildren."

(That is, she desired to disinherit her only children, Mrs. Moore and Mrs. Russell.)

Q. "Did you have any conversation with Mrs. Campbell upon this subject after the death of Miss Eloise Campbell?"

As the witness has just stated that this alleged conversation took place "less than a year" before Mrs. Campbell's death (August, 1893), it of course took place after the death of Miss Eloise Campbell, which was on October 1, 1885 (R., 4).

A. "Yes; after her death she told *me* that she divided it equally between Mrs. Moore and Mrs. Russell, $12,000, she told *me*, which she supposed her husband had laid aside for the support of *Miss Eloise.*"

Q. "And there was something else she said, or did she say anything with respect to her wishes in regard to the rest of her property?" A. "No, sir; except what I have told you. She wished the balance—she did not say property; she said money—to be divided among her grandchildren."

Q. "Now, is there anything pertinent to this controversy that you know of as coming from Mrs. Campbell, senior; is there anything else that she said to you?" A. "No, sir; I think I have said everything. There is one thing I remember now. *The last time* she had a conversation with *me* she told *me* to sit close to her—she was very deaf. Told me to listen to her and not to reply; that there was *always* somebody listening at the door. She told *me* that she was not under obligations to the Moores, for she paid them ample board for her maid and herself."

Against this alleged *secret* part of the conversation between Mrs. Mary I. Campbell and this witness I place what Mrs. Carlisle, her maid, says Mrs. Campbell told her when she

left the room after Mrs. Mary K. Campbell called upon a certain occasion (R., 83): "There was no occasion for me to leave, *as there were no secrets;*" and as to any one ever listening at her door, I refer to the testimony of all of the witnesses for the defendants who could have observed any such conduct, denying that any such contemptible thing ever occurred.

This closes the direct examination of this witness; and I respectfully submit that from a careful reading of her testimony no one could possibly imagine for an instant *that any one was with her* during *any part* of the time she has been speaking of; but *certainly* during that part of the alleged conversation in which she states that "*she had divided* this money between Mrs. Moore and Mrs. Russell equally," she distinctly and positively swears "*I WAS ALONE*" (R., 41).

3d. So I say, thirdly, *they have proved that no one but this witness was present* when Mrs. Mary I. Campbell is alleged to have stated all this to Mrs. Laura E. Baker.

Upon cross-examination, in response to some inquiries from me relative to any gifts made her by Mrs. Campbell, she says (R., 42): "*One* Christmas, sir, she gave me forty dollars for a Christmas gift."

This is about the only specific gift that she seems able to recall.

Against such ingratitude from a so-called "*intimate friend*" I place the letter, dated Philadelphia, November 26th, 1890, from Mrs. Mary I. Campbell to Mr. F. L. Moore (R., 135), in which she says:

"I am about to anticipate, but better too early than too late. *I have usually sent my poor friend, Mrs. Laura Baker,* a gift a few days before Christmas. Please send her forty (40) dollars between the 1st and the 10th of December," etc.

(R., 43:) Q. "She told you in that conversation that Mr. and Mrs. Moore had both tried to get her to divide this $12,000, *or bonds,* up between them"? A. "I did

not say Mr. Moore, sir. I said Mrs. Moore and Mrs. Russell. I did not mention Mr. Moore's name. I did not say *bonds*, either. I said *money—$12,000. She never told me anything about bonds.*" (This she repeats—R., 44).

So we have it proved, by the complainants' own witness, that what Mrs. Mary I. Campbell is alleged to have told her *had no reference whatever to these bonds, to set aside the gift of which is the real and only object of this proceeding.*

(R., 43:) Q. "Was there anything unpleasant said at any of the other visits about Mr. and Mrs. Moore and Mrs. Russell?" A. "Only on this *one occasion*, sir."

So, notwithstanding the fact that complainants' counsel has himself proved by this his witness that this alleged conversation took place "*not as much as a year before her* (Mrs. Mary I. Campbell's) *death*" (R., 40) (which was in August, *1893*), now, under so-called redirect examination, she states, in response to his *leading* questions, that—

"the conversation * * * took place a *month or six weeks* after the death of Miss Eloise, * * * which was in *1895*" (R., 44).

And she then denies having said that it took place a few months before Mrs. Campbell died (R., 45).

I have given in full all of the material parts of the testimony of this witness, because the whole case of the complainants, *heard on its merits*, hinges on the truth or falsity of her statements, and I shall want to refer to different parts of her testimony occasionally hereafter.

When we met *one week afterwards, October 31* (R., 45), *at the request of complainants' counsel*, to enable this witness to make some *corrections* in her evidence, *the examiner read her testimony all over to her* (see cert. of ex., R., 149, 150), and she then states (R., 45):

"I wish to correct my testimony in respect *to the* TIMES of *my* conversations with Mrs. Mary I. Campbell

testified to by me in my examination. (1) Mrs. Mary I. Campbell told *me before the death of Miss Eloise* that Mrs. Moore and Mrs. Russell had made her promise that if she outlived Miss Eloise she would divide equally between them *the $12,000 in money.* That was before Miss Eloise's death. (2) Then afterwards *I* went to see her after Miss Eloise's death—a month or six weeks, I think—and she told ME *that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell. That was after Miss Eloise's death. (3) Then just before she went to Philadelphia she told *me* of the unkind treatment of Mrs. Moore and Mr. Moore."

So now, after the testimony of this witness had all been written out, and had been in her and these complainants' possession for about *one week*, and the examiner had read it *all* over to her, she changes her former story and makes three separate and distinct visits out of it; but she does not pretend even now that any one accompanied her on these alleged visits. On the contrary, she *reiterates* as to this *second* visit:

"Then afterwards *I* went to see her after Miss Eloise's death—*a month or six weeks*, I think—and she told ME *that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell."

But most important of all to be observed is that she does not make any change in that part of her testimony, above noted, in which she swears *positively*, "I WAS ALONE" when Mrs. Mary I. Campbell told *her* "*that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell."

She concludes her corrected testimony, in answer to a question by complainants' counsel, by stating that she only saw Mrs. Mary I. Campbell *once* after she returned from Philadelphia (R., 46)—*i. e.*, once in the last seven years—after first testifying that "she (I) saw her two or three or four times a year."

Now to go back for a moment.

The first witness called by the complainants was Mrs. Mary Duncan Bradley (the widow of Joseph H. Bradley, Jr., Esq., a former member of the bar of this court). She resides at No. 1688 Thirty-first street, Georgetown (R., 38), and is the next-door "*neighbor*" on the north to the Moores (R., 100).

As Mrs. Laura E. Baker, whose testimony I have just been commenting on, had told these complainants that Mrs. Moore had told her that her mother, Mrs. Mary I. Campbell,—

"went around the neighborhood talking to the *neighbors* against them" * * * "and named Mrs. Bradley as one of the *neighbors*" (R., 41),

they doubtless thought that it would tend to strengthen the testimony of this, their chief witness, if they called Mrs. Bradley first and had her *corroborate* Mrs. Baker, in a measure, *in advance.*

Well, what does Mrs. Bradley swear to?

Testimony of Mrs. Mary Duncan Bradley (*R.*, 38).

In the first place, she contradicts both of the next two witnesses called by the *complainants*—Mrs. Mary K. Campbell and Miss Eliza B. Baker—by stating, in response to questions by complainants' counsel (R., 38, 39), that she did not see any weakness in the mental powers of Mrs. Mary I. Campbell at all:

> "No; until *the last month or two before her death* (1893) I noticed that she was a little feeble. I could scarcely call it weakness. I do not think she had her usual *vigor* of mind, *but her mind was clear.*"

Compare this with their testimony (R., 53, 54, 141) hereafter referred to by me. Then she is asked (R., 39):

> Q. "Did she (Mrs. Mary I. Campbell) at any time inform you *of the fact*—(how a "fact?")—that any one importuned her for a gift of any portion of her property?" A. "No."
>
> Q. "Did she at any time complain to you in *any way* about the treatment she had received?" A. "No."
>
> Q. "Now, did *any one ever* say to you that Mrs. Campbell had made complaints?" A. "Complaints of what?"
>
> Q. "Of Mrs. Moore?" A. "No."
>
> Q. "Was there *anything* at *any time*, in conversation between you and *any one*, *tending* in that direction?" A. "No; I do not recollect."

Is Mrs. Laura E. Baker corroborated by this witness? So much for the first two of their witnesses. Who is the third one, and what, briefly, does she testify to?

Testimony of Mrs. Mary K. Campbell (*R.*, 46).

She is the mother of these complainants, and although she may have no *direct* interest in the result of this suit, her interest as mother is something to be considered, and as "committee" of her son, Wm. H. Campbell, Jr., she is a party complainant, and I respectfully submit that she testifies to many things that she is prohibited by law (R. S. U. S., sec. 858) to speak of.

Page *vs.* Burnstine, 102 U. S., 664.

By COMPLAINANTS' COUNSEL (R., 47):

> Q. "Did you ever have any conversation with the elder Mrs. Campbell with respect to the *division of these bonds?*" A. "No, sir; *I never had any conversation.*"
>
> Q. "Did you ever hear from *anybody* that Mrs. Campbell had said *anything* about the *division of the bonds*

and the circumstances under which *the money had been given, as she called it?*" A. "I heard from Mrs. Baker *what Mrs. Baker has just said.*"

Q. "*What did Mrs. Baker state?*"

Now also note particularly what she inadvertently lets drop, and how she tries to smooth it out again:

A. "*She told me that she had given these* $6,000 *to each daughter* TO MAKE THEM EQUAL. That is not right. She said she gave that $6,000 to each daughter because of the importunity, and she made them a promise, before Eloise's death, that if she survived Miss Eloise that she would do it."

If Mrs. Mary I. Campbell ever did tell Mrs. Baker anything about the gift of these bonds or "money" to her daughters, she told her, as the *reason* for the gift, just what this witness *first* says that Mrs. Baker told her, viz., that she did it "*to make them equal,*" for this is exactly what Mrs. Mary I. Campbell herself declares in her written statement accompanying the gift (R., 134), which I shall refer to hereafter. This is in substance the direct examination of their last witness on the question at issue—the gift of these bonds; and *they* have proved by her that Mrs. Baker had told their mother, Mrs. Mary K. Campbell, all about this alleged fraud practiced by these daughters, Mrs. Moore and Mrs. Russell, on their mother, Mrs. Mary I. Campbell.

But it will be observed that we have not *yet* been told *when* Mrs. Baker is alleged to have reported all this to Mrs. Mary K. Campbell; so finally I undertook to find that out, and I asked her (R., 57):

Q. "When did Mrs. Baker first tell you of this alleged gift of $12,000 between Mrs. Russell and Mrs. Moore by Mrs. Campbell?" A. "It was after the death of Miss Eloise."

Q. "How short after the death?" A. "I expect it was *a very short time*, because she told me *just as soon as Mrs. Campbell told her*, and Miss Eloise died *October 1st*, 1885."

So now we have it proved by their own witness that Mrs. Mary K. Campbell, one of the complainants in this proceeding, and the mother of all of the other complainants, *knew all about this pretended fraud* practiced on her mother-in-law, Mrs. Mary I. Campbell, *as far back as 1885*, and—

"she did not say a word to Mrs. Mary I. Campbell about it;" * * * nor did Mrs. Mary I. Campbell ever speak to her on the subject (R., 47).

If Mrs. Baker did tell her what she, *Mrs. Baker*, states, why did not this complainant, Mrs. Mary K. Campbell, say something to Mrs. Mary I. Campbell about it in her lifetime? Why did she wait till nearly eleven years afterwards, nearly three years after Mrs. Mary I. Campbell's death, and some two years after the executors had settled up and distributed all of the personal estate, before charging them with these alleged frauds?

Hammond *vs.* Hopkins, 143 U. S., 224, 252, *ante.*

There is no excuse whatever given in this bill, and certainly none whatever offered by the evidence.

Badger *vs.* Badger, 2 Wal., 87, 95, *ante.*

Lansdale *vs.* Smith, 106 U. S., 391, 394, *ante.*

Is not the other theory, then, the more probable one, viz., that Mrs. Mary K. Campbell knew that Mrs. Mary I. Campbell did it—*as she, Mrs. Mary K. Campbell, inadvertently first let drop in her statement about it*, noted above (R., 47)—"*to make hem equal,*" *just as Mrs. Mary I. Campbell says she did* (R., 134).

Let us now go on and see how reliable is the testimony of this witness.

She admits that she received $1,000 from Mrs. Mary I. Campbell after these gifts of the bonds to Mrs. Moore and Mrs. Russell (R., 48, 58, 59); that she—

> "*never heard* of her (Mrs. Mary I. Campbell) being very charitable *before* her husband's death, * * * *nor*

after her husband's death, *except to me*, I presume that may be considered charity" (R., 48).

Against such *ingratitude* I place her subsequent testimony as to gifts to Miss Mason (R., 139), where she states, *in answer to questions by her counsel:*

"Yes; she *repeatedly did* (befriend Miss Mason) at former times; she wanted to put her in the Home for the Aged—Woman's Christian Home. I think it is upon Thirteenth street. She was *very kindly* disposed toward her."

And see their own exhibits (R., 61), *letters to this witness by Mrs. Mary I. Campbell.* And, in strong contrast with such feelings as this witness gives expression to, see the testimony of Mrs. Moore, *cross-examination* (R., 112):

"From my earliest childhood that was her main pleasure, helping those who were destitute. From my earliest childhood I remember it. *She was always doing it*, and the charitable disposition extended not only to persons who were destitute, but to charitable institutions."

As mentioned by me before, there was a written statement by Mrs. Mary I. Campbell accompanying the gift of these bonds (R., 134), a thing that would have been entirely unnecessary, and which would not have been thought of or requested by Mrs. Moore of her mother had she not learned, from most unpleasant past experience, that they might have trouble *again* with this same sister-in-law. My questions here of this witness have reference to this previous family rupture, made by this same person, because Mr. Campbell had seen proper to leave each of his daughters—Mrs. Moore and Mrs. Russell—$5,000, but without any pretense, as claimed by the complainants in their bill—as will be seen from his will (R., 9, 12)—that by the gift of these sums he had made the shares of the daughters equal to what the son and his (the son's) family had previously received.

So I asked her (R., 48):

> Q. "Did you have anything unpleasant with Mrs Campbell and Mrs. Moore and Mrs. Russell as a result of that bequest (those bequests) of $5,000 in the will of your father-in-law?" A. "Not that I know of."

At the very time she is stating this she has in her possession (R., 52) a statement or letter, not dated—but which the evidence shows was written shortly after the death of Mr. Campbell, which was in 1881, and prior to June 17, 1882 (R., 133)—from Mrs. Mary I. Campbell *to this witness in reference to this very matter,* and which the complainants subsequently introduce in evidence (R., 59), *after* I had offered in evidence a similar one (R., 51, 132, 133), written by Mrs. Mary I. Campbell to her daughter, Mrs. Julia A. Russell,—who was accused of having perpetrated a fraud on her father, by which he was induced to leave these two daughters $5,000 each by his will,—in which she tells them both the true reason why it had been done, as follows:

"I desire to state that the charge which has been brought against my daughter Julia, *as having in any way, either directly or indirectly,* used any influence connected with her father's will, *is false in every particular, especially* with regard to the legacy of $5,000 each to her and her sister. I wish to say that *it was done at my suggestion, without the knowledge of either of them,* KNOWING, *as I did, that our son had received considerably more than either of his sisters. We did it in justice to them, and even this amount did not make them equal to him, as the books now show* $6,897.62 *more than either of them received.*

"I wish my dear children to know that the few days my Heavenly Father may permit me to remain in this 'vale of tears' it shall be my endeavor and sincere prayer that we may live in *peace* and love, *and that when I am gone they may strive to do the same,* and that we may appear before the throne a family chain, not one link missing.

"MARY I. CAMPBELL."

(By a rather ludicrous mistake (among others) of the typewriter who got up the transcript of the record in the supreme court of the District of Columbia, the word "*upon*" has been substituted for that of "*before*" in the sentence "*before* the throne" in the copy of the above statement given by Mrs. Mary I. Campbell to Mrs. Russell—R., 133).

Do we see now any explanation as to why this witness did not speak to Mrs. Mary I. Campbell of what she says Mrs. Baker told her in October, 1885, and do we not also see the motives that actuated this mother in giving them these bonds, as well as those that actuated the daughter subsequently, in desiring some written declaration or statement from her mother when this gift was proposed?

If Mrs. Baker had told this witness what she (the witness) *first* said that Mrs. Baker did, viz, that she did it "*to make them equal*" (R., 47), would she have dared to say anything to this mother about it, after receiving the above letter from her in reference to the former false charges made against one of these same daughters a year or so previous? But if Mrs. Baker had told her what she (*Mrs. Baker*) says Mrs. Mary I. Campbell told her, would she not, most naturally, have at once, upon hearing of such mean, contemptible, cruel treatment, gone to this mother and inquired about it?

And if this old mother had received such treatment at the hands of her daughters and son-in-law, *would she not, most probably, have at least written this witness something about it?* for the testimony shows that she was frequently writing her as well as receiving personal visits from her; yet she never did!

To resume the testimony of this witness: She then proceeds to explain what, in her opinion, was the *real* cause of the unpleasantness then existing between Mrs. Mary I. Campbell and herself, and says (R., 48) it was because she (the witness) came to the conclusion that Mr. Campbell should not have left his property to his wife, for the reason that "*she can do as she pleases. It was left to her.*"

How does this harmonize with the theory of their bill as stated in the sixth paragraph thereof, viz:

"For the purpose of carrying out this *intention* (*that it should be equally divided between their three children*) the said Wm. H. Campbell, on the 16th day of March, 1878, made and published his last will and testament," &c. (R., 2).

(R., 48:) Q. "As a result of that fuss, what took place between you and Mrs. Campbell?" A. "*For some time* she resented it."

Q. "Did you apologize afterwards for having done that—say you were sorry for having made any unpleasantness in the family?" A. "No, sir."

Q. "You did not say anything *like that or write it?*" A. "*I did not write.*"

Let us see if she did not.

Defendants' Exhibit No. 2 (R., 133) is a letter from this witness to the defendant Julia A. Russell, and is as follows:

"WASHINGTON CITY, *June 17th*, 1882.

"DEAR JULIA: As you sent my last letter to Ginnie Moore to read, and as she places the same construction upon it as you do, I write again. It was my intention to have conveyed to your mind that *we had exonerated you and regretted the story had been told upon you.* I am just, even in injustice, and would never injure you either by word or deed. *As soon as I felt that you had been falsely accused I began to make reparation by showing your mother's statement.* The charge against you reached me before your father's death. The crime was so great that I could not believe you guilty, so doubted the accusation *until the will was read. I then believed, seeing the change had been made after your brother's death.* I told you what I had heard at that time; THEN it should have been inquired into and satisfactorily settled. I now know how I am regarded by your family. *All* have turned against me; but I am firmly supported by the consciousness of my own truth, integrity, and honor.

"MARY K. CAMPBELL."

Could not the advice that she here gives Mrs. Russell,—"*then* it should have been inquired into and satisfactorily settled,"—be most appropriately applied in this case? She testifies that she knew all about this alleged fraud as far back as 1885, and yet she "did not say a word to Mrs. Mary I. Campbell about it" (R. 47)!

Four days afterwards, October 28 (R., 56), she again testifies, and admits that she did write.

By referring to the will of Mr. Campbell (R., 9, 10, 11) it will be seen that the only "*change*" made by him in his will was by codicil, appointing new executors, rendered necessary by the death of his son, who was one of the executors, and that what this witness says in this letter about Mr. Campbell having *changed* his will *after* the death of his son—she means by adding the legacies of $5,000 to each daughter—is untrue.

I asked her (R., 49) if she and Mrs. Mary I. Campbell had any conversation about this unpleasantness, and she replies:

> "Mrs. Campbell and I had no conversation in reference to that. She showed by her manner that *she was angry because I criticised her husband's act.*"

Redirect:

> (R., 50:) Q. "What else was there that made you think the will was unjust besides what *Mrs. Kennedy said to you?*" A. "*Mr. Wm. H. Campbell told me* that he intended leaving MORE *to his son than to his daughters.*"

How does this agree with what she and her daughters have distinctly stated in the fifth paragraph of their bill (R., 2), viz:

"The said Wm. H. Campbell and Mary I. Campbell were excellent people, devoted parents, and confided to their beloved children their purposes and intentions in respect to the disposition of their property, *always declaring* that it should be *equally* divided between their three children, Leonidas, Virginia, and Julia"!

Q. "I understand that you had offended Mrs. Campbell by expressing an objection to that will, *one of the reasons being that her daughters, or one of them, had caused that* $5,000 *apiece to be put in the will*, what made you say that?" A. "I do not know."

Q. "How come you to say that Mrs. Russell, the daughter, had anything to do with that $5,000?" A. "*Because Mrs. Admiral Russell* (the wife of the brother of the defendant, Alex. W. Russell), *told me* there was a will made in advance of that will, and after Mr. Campbell's former will, he changed that will, and Mrs. Admiral Russell knew that the will was changed and asked me if I did not think Mrs. Julia Russell had something to do with the changing of the will, *and I did think so.*"

Q. "Now did your thinking so and stating so, cause any unpleasantness between you and Mrs. Campbell?" A. "*Yes; and the whole family.*"

Now in reference to *when* the reconciliation took place:

(R., 51:) Q. "Was it during the lifetime of Miss Eloise or after her death?" A. "*After her death.*"

Q. "How long after her death?" A. "I think Miss Eloise died in 1885, and I *know* it was somewhere along '88."

Q. "*After her death?*" A. "*Yes.*"

As will be seen from the subsequent questions of complainants' counsel, he is desirous of showing that at the time of the gift of these bonds to her daughters (1885), Mrs. Mary I. Campbell and this witness, her daughter-in-law, were on friendly terms again, and that this quarrel, which this daughter-in-law had with this old lady, had all subsided and they were friends again; but he cannot get her *yet* to state this—she does not yet see the real motive. So after I had her identify, *and had introduced in evidence*, the letter or statement by Mrs. Mary I. Campbell, before referred to by me (R., 51, 132, 133), refuting the former false charge brought against Mrs. Russell, *and complainants' counsel had gotten her*

to identify a similar paper which she had received from Mrs. Mary I. Campbell (R., 52, 59)—

> "*At the request of counsel for complainants* an adjournment was had until Wednesday, *October 28th*, at 12 o'clock" (R., 52).

Four days having now elapsed, this same witness is recalled by complainants' counsel and made to begin again and go over this matter of the unpleasantness between herself and Mrs. Mary I. Campbell (against my objection), and, of course, she now brings it all out quite differently, just as their other witness, Mrs. Baker, did, and she now has the reconciliation complete *before* the death of Miss Eloise and before the gift of the bonds to the daughters. The weight to be given to such testimony I leave to the court.

Then she is asked as to the mental condition of Mrs. Mary I. Campbell *after* her return from Philadelphia *in 1892*, and she replies "she was as *weak* and *broken* in *mind* as she was in *body*" (R., 53, 54).

In opposition to this (although it has nothing to do with the matter in controversy—the transfer of the bonds in 1885), I put the testimony, before referred to, *of their own witness*, Mrs. Bradley (R., 38, 39), as well as that of the witnesses called by me, Dr. Peter (R., 79), Mr. Brown (R., 88), Miss Blanchard (R., 92, 93), Mrs. Beall (R., 100, 101), and several others, and also the letter, previously referred to by me, from this old mother herself to Mr. Moore, written November 26, 1890 (R., 135), the day before Thanksgiving day, *and a year and a half only* before her return from Philadelphia, in which she says:

> "May our thanksgivings ascend not only tomorrow but daily, for the many mercies we are receiving from our Heavenly Father. *Why am I permitted to enter my 90th year with so few of the painful infirmities of old age?*
>
> "Sincerely yours, M. I. CAMPBELL."

And I make the same observation in reference to what this witness *says* Mrs. Mary I. Campbell *told* her about being so unhappy at the homes of both of her daughters (R., 53, 54), viz: Why did she (Mrs. Mary I. Campbell) never *write* to her about this; they were corresponding constantly with each other, and this witness says that they were on such intimate and affectionate terms? Can this be true? Can it be reconciled with the tenor of her own letters and with what these other witnesses that I have just mentioned have sworn to? Take, for example, the testimony of Mr. Brown (R., 89), descriptive of his visits to the Moores—these visits, too, were after her return from Philadelphia (1892, 1893):

"I have never been in a household that was as lovely in my life, and I never went away from there without feeling that I had gained something by my visit. I never visited a house where there was any lovelier temperament or atmosphere than there was in that house between the family themselves and Mrs. Campbell. She was one of the family *really* and one of the most beloved members of the family. They showed her every attention, and were perfectly devoted to her, *as she evinced by her words and actions.*"

Then she is asked by complainants' counsel about how she received the $1,000 Mrs. Campbell gave her (in the summer of 1891), and she replies (R., 54):

> "The first check was *enclosed* in a letter to Mr. Moore, which he sent me (R., 58, 59). Now, the other (R., 59); I do not know so much about the other, how I got it, but I do know that Mr. Moore called to see me, for I received the check, and *he expressed pleasure that I had received it. I thought it was through his instrumentality, through his* INFLUENCE, that I received it, *and he said it was not so, and he only wished it was thousands instead of a thousand, showing his friendly relation to me.*"

Here we see the same suspicious thoughts and feelings exhibited by this daughter-in-law as was shown by her on the

death of Mr. Campbell, and which had been so thoroughly and effectually rebuked by the mother, then alive—the same suspicious thoughts and feelings as now, *when she thought this old mother's lips were surely closed.* But experience teaches one something, and so when their mother expressed the desire to give them these bonds (R., 123, 125, 134), "*to make them equal*" (to the son), *as this witness herself first stated that Mrs. Baker told her* (R., 47), they did not forget the unpleasantness they all had so recently gone through with this same daughter-in-law; for if she made similar charges again this old mother might not then be living to again deny them and assume the entire responsibility for the act and relieve them of the false accusation, as she had done before (R., 59, 132). So most properly and naturally they asked her to give them some statement in writing (R., 123, 134, hereafter referred to by me) to *again* show this sister-in-law if she should *for a second time* bring false charges against them and *again* seek to make trouble in the family.

As this witness had stated (R., 50) that *some one told her* that Mr. Campbell had changed his former will, and that his daughter Julia, *she believed*, had something to do with it, I asked her—what I felt sure was the fact—if her own father (the late John C. Kennedy, Esq.) had not drawn this very will, and she answers (R., 55): "I had forgotten it entirely; but now that you say so I remember that he did, but I had forgotten it."

She changes this afterwards (R., 57) in response to inquiries from her counsel, and says that her father did not write this will. It was evidently written by a lawyer, and as I afterwards show (R., 116) that the draft or form of the codicil is entirely in the handwriting of the father of this witness, I think the natural and reasonable conclusion is, that he did write this will, too, *as she first admitted.* I mention this only to show in corroboration of what Mrs. Mary I. Campbell herself said:

"That the charge which has been brought against my daughter Julia (Mrs. Russell), as having in any way, either directly or indirectly, used any influence connected with her father's will, *is false in every particular*" (R., 59, 132).

This witness had the idea, however, as will be observed from her testimony (R., 55)—"Her (Mrs. Mary I. Campbell's) son only lived a few months *after* the death of her (Mrs. Mary I. Campbell's) husband"—as well as from her letter, which she at first denied writing, to Mrs. Julia A. Russell (R., 49) and which I introduced afterwards in evidence (R., 133)—"I then believed, seeing the change (in Mr. Campbell's will) had been made *after* your brother's death"—that Mr. Campbell had changed his will just before his death by adding the two legacies, of $5,000 each, to his two daughters. An inspection of the will, however (R., 9, 10, 11), shows that it was made March 16, 1878, and the codicil September 7, 1878, the son having died August 15, 1878 (R., 54), and the only change made in the will by the codicil, as mentioned before, was the appointment of additional executors, rendered necessary by the death of the son, who was one of the executors.

Now, *as the complainants had shown* (R., 52) that they received from Mrs. Mary I. Campbell a letter or statement (R., 59) similar to the one she sent her daughter, Mrs. Russell (R., 132), in reference to this former charge, *like the present one, of undue influence*, I asked this witness (R., 55):

> Q. "*Upon the strength of that letter* you became satisfied that the charge brought against Mrs. Russell *was false*, did you not?" A. "Yes; I suppose I can answer that."
>
> Q. "In other words, *you believed* what Mrs. Campbell had written in that letter?" A. "*I did; yes;* and she exonerated her daughter."

Upon reading what Mrs. Campbell says in this letter, which this complainant has just said *she believed*, it will be

observed that Mrs. Campbell not only refutes the false charge brought against her daughter, Mrs. Russell, but also tells this daughter-in-law (R., 59):

> "*We did it in justice to them (the daughters), and even this amount (the legacies of $5,000 each) did not make them equal to him (the son), as the books now show $6,897.62 more than either of them received.*"

Now, whatever this daughter-in-law of Mrs. Mary I. Campbell may accuse her sisters-in-law and brothers-in-law of doing, she, and no one else, up to the time of bringing this suit, has ever accused this old mother of telling a falsehood or of misrepresenting anything to any one. *Of course,* "she *believed* what Mrs. Campbell had written in that letter," and she knew, as well as she knows anything in this world, that the son (her husband) and his family had received, over and above the amount of the legacy left by Mr. Campbell to each of his daughters, *exactly what the mother says he had received.* Emphasis was laid by counsel, in their arguments before the lower courts, that the defendants did not produce "the books" and *prove* that what Mrs. Mary I. Campbell has stated, as to the amount received by the son in excess of what was received by each of the daughters, was true. I respectfully submit that no such duty devolves upon defendants, for the representative of the son's family, Mrs. Mary K. Campbell, has had in her possession for about fifteen years—since about 1881—as admitted by her (R., 52), a copy of this statement Mrs. Mary I. Campbell sent her (R., 59), of which the above is part, and yet there has never been any protest by her or any one else against its correctness (R., 47), and this representative of the son's family has just stated that *she* "*believed* what Mrs. Mary I. Campbell had written in that letter," and *if this admission is not true, why, then, did not the complainants call for the books?*

The letter similar to this one, let me observe, *I had already introduced in evidence before the complainants finished their*

examination of this witness (R., 51). What explanation do they offer as to its contents, for it is a complete answer to the whole theory of their bill? Not a word!

Counsel for complainants then announced that this closed his testimony-in-chief (R., 57).

Three days afterwards, October 31, 1896 (R., 57), this witness comes back again, has her testimony read over to her by the examiner (see Cert. of Ex., R., 149, 150), and again makes more changes and corrections.

If I had submitted no testimony, I feel quite sure, under the showing *the complainants* themselves have made, the court would have been fully justified in dismissing their bill, not only on the ground of laches, for the complainants themselves show that they knew all about this gift "a very short time" after it was made in "October, 1885," (R., 57), yet no excuse is offered, either in their bill or their testimony, for the delay of nearly eleven years, but also because they have not offered a word of testimony about any gift or transfer whatever of *bonds*, the obtaining of which by alleged undue influence is their whole case; and, to go a step further, I respectfully submit that even if there had been no laches, and such testimony as they have offered were true, and could, for the sake of argument, be applied to the gift of these bonds, it would be wholly insufficient for the purpose sought here to be accomplished by it (Conley *vs.* Nailor, 118 U. S., 127; Mackall *vs.* Mackall, 135 U. S., 167). But as my clients were accused of perpetrating frauds, and with breach of trust, they desired that the whole case should be heard; so we proceeded with our evidence and took the testimony of fifteen witnesses, four of whom were these defendants.

I was aware of the fact that *perhaps* because these defendants are husbands and wives, they could not testify at all; but it appeared to me that it would make rather a bad impression if I did not call them and have some explanation from them as to the frauds which they are accused of prac-

ticing on this old mother. It would seem rather remarkable that in an *equity* court persons could be accused of such things as these defendants are here charged with being guilty of, and while the person who has twice now been the cause of so much family unpleasantness, a complainant herself and *the mother of all the other complainants*, can swear to most anything she pleases against them, they cannot open their mouths in their own defense. I took the view that it would be safer and better to have them called and sworn, interrogate them as to the truth or falsity of what they were accused of having done, *and offer them for cross-examination.* If the court should be of opinion that they could not testify at all, it would be very easy to leave out, in the consideration of the case afterwards, their testimony entirely.

Stickney *vs.* Stickney, 131 U. S., 227, 237.
Hopkins *vs.* Grimshaw, 165 U. S., 342, 349, 351.
Smith *vs.* Cook, 10 App. D. C., 487.
Beall *vs.* Brown, 6 Mack., 574, 576.

Counsel for complainants saw proper to cross-examine only one of these defendants, Mrs. Moore; but when the case came on to be heard he volunteered to inform Mr. Justice Hagner that he—

> "expressly waived objections to the competency as witnesses of F. L. Moore, Alex. W. Russell, Mrs. C. V. Moore, and Mrs. Julia Russell."

And this stipulation his honor had them put in writing and file (R., 150). For the purposes of this case it is immaterial to me whether this testimony is actually considered or not. We have, I feel sure, met and fully answered every material part of all competent testimony offered by the complainants, without the aid of the testimony of these defendants.

Very briefly, then, let me show what has been testified to on behalf of the defendants Moore and Russell: First, call-

ing attention to the fact, that while, as will be observed, counsel for complainants had his two witnesses (Mrs. Laura E. Baker and Mrs. Mary K. Campbell) go over and over again their statements in relation to what they were testifying to, and, when he could not get the testimony just as desired, adjourned the session for several days, and had the witness come back and go over it again, and then a few days after that come back again, have the examiner read the testimony all over to her and make changes again, I purposely did not ask any of our witnesses to go over their testimony, I asked for no adjournments, and our witnesses have never been permitted to make any corrections whatever in their testimony. There is presented on our side, *just as the words describing it dropped from the lips of the different witnesses*, a true picture of the *real* home life of Mrs. Campbell, particularly during the eight years that she resided with her daughter Mrs. Moore, this being the period covered by the testimony of the complainants' chief witness, Laura Ellen Baker, and I think it will be impossible to form any other opinion, after reading this testimony of the persons who lived in the same house with her and were constant observers of everything that transpired in the family (her maids), as well as that of the frequent visitors to the house who saw and talked with her, than that she was, notwithstanding what Mrs. Baker has sworn to, *most happy* there during all this time, and that she dearly loved and was in return, as she well knew, equally well beloved by each and every member of the household. The weight due such testimony so taken, compared to what has been testified to by the witnesses for the complainants in the manner in which it was finally obtained, is, I think, worthy of notice.

Testimony for Defendants.

Mrs. Emily Allen (*R.*, 71).

She was Mrs. Mary I. Campbell's maid, at the Moores', from the spring of 1881—the death of Mr. Campbell—to the fall of 1883 (R., 71), Mr. Campbell having died May 21, 1881 (R., 3).

In substance she testifies (R., 71, 72) that Mrs. Mary I. Campbell was—

> "of sound mind, and as far as any disagreeableness is concerned I never heard of any. She was always kind and good to Mr. Moore, and also to her grandchildren, Miss Ella and Mr. Will. They were just as kind and good to her as they could be, and everything was done for her comfort."
>
> "*She would often say that she thought Mr. Moore was so kind and good to her, and Mrs. Moore also;* always said they were so kind to her; done everything that she thought they could for her comfort."
>
> Q. "Did she seem to have any *fear* of Mr. Moore?" A. "No, sir. I don't think she had any fear of anybody. She had a mind of her own, and she did not fear anybody. She was not afraid of anybody, I don't think."
>
> "She was a woman who gave a great deal to charity."

Mrs. Margaret Courtney (*R.*, 75).

She occupied the same position—as maid—from October, 1883, to June, 1886, at Mr. Moore's (R., 75). This covers the period during which Mrs. Campbell, according to the testimony of the complainants' witness, Mrs. Laura E. Baker, complained of the treatment she was receiving from Mr. and Mrs. Moore, as well as the date when these U. S. bonds were given by her to her two daughters.

> "Mrs. Campbell was very well. Occasionally she would have little bad spells, but everything was very

pleasant indeed. *Mrs. Moore was perfectly devoted to her mother. I do not remember of ever hearing an unkind word spoken, and Mrs. Campbell always spoke of Mr. Moore in the highest terms.*"

Q. "Did you ever observe any of the Moores listening at the door to any conversations?" A. "Never."

Q. "Did Mrs. Campbell ever refer to any such thing as that?" A. "Never, in my presence."

Then she states (R., 79) that Mrs. Campbell—

"paid a visit to her granddaughter's, Mrs. Robert Tenney, *a very short time* after the death of Miss Eloise (which was on October 1st, 1885), and returned in December."

"She was very pleasant and very charitable. She was always willing to help any one in need; devoted her leisure moments providing for the poor in winter."

Q. "What was her condition mentally?" A. "Well, Mrs. Campbell was a lady of sound mind, and one that could not be influenced."

Q. "What do you mean by influenced?" A. "*She could not be persuaded to do anything she did not want to do. She had a will of her own. She was very bright, and of remarkably good health.*"

Cross-examination (R., 77):

"*Whenever she called Mr. Moore's name it was always in the kindest manner.* She spoke particularly of his being very charitable and pleasant in his home to everybody. * * * *She always spoke of him in that way.*"

Q. "What do you know about this kindness?" A. "Well, Mr. Moore was a very particularly kind gentleman in his home. I have the first time to hear him speak an unkind word to a servant in his house."

Dr. Armistead Peter (*R.*, 79).

He was the family physician. He has a very troublesome impediment in his speech, and the stenographer has the dates of his visits to Mr. and Mrs. Campbell from 1881 to

1885 and 1891 to 1893. The latter period was from 1892 (when Mrs. Campbell returned from Philadelphia) to 1893. It is of no consequence, however, and I did not recall him to correct it.

He states (R., 79):

"Mrs. Campbell was perfectly well, mentally and physically, and her family were always very friendly and good to her."

Q. "About how often were you called in to attend her for sickness?" A. "Not very often; several times during 1881 and 1882 and several times during '91 and '92—altogether about fourteen or fifteen visits."

Q. "*How did you find her mentally always?*" A. "*Perfectly sound; perfectly well mentally.*"

"I always found her perfectly qualified to transact any business and answer any question I put to her. * * * *She had a very strong will power.* * * * *Always bright and happy* when I was with her."

Cross-examination (R., 80):

Q. "*You speak of her having exhibited great will power?*" A. "*She had a very decided will power.* * * * Always talked very clearly and expressed herself very well."

Mrs. Carrie Carlisle (*R.*, 81).

She acted as her maid from July, 1892—very shortly after Mrs. Campbell's return from Philadelphia—till her death, in August, 1893 (R., 81).

(R., 82:) Q. "What was her physical and mental condition when you first went there, and how did she continue up to her last illness?" A. "Splendid. Her mind was as perfect and cheerful as could be."

Q. "How long was she sick in her last illness?" A. "Only three days."

Q. "Do you remember any one calling there while you were waiting on Mrs. Campbell during that period?" A. "Yes, sir; she had several callers. A Mrs. Mary K. Campbell called several times, and in one instance she

remarked to Mrs. Campbell about her financial affairs; said that she had a good deal of trouble in that respect; and Mrs. Campbell then remarked to me—asked me if I would give her her money box, which I did and then left the room."

Q. "Did you ever find any one listening at the doors there, at Mrs. Moore's?" A. "No, sir; never. Whenever Mrs. Campbell had company I always left the room, but she would remark upon my returning, why did I leave the room? I told her I thought I ought to leave. Probably there was a little confidential matter she would like to have with her friends. She said, no; there was no occasion for me to leave, *as there were no secrets.*"

Upon cross-examination she was asked:

(R., 84:) Q. "Was it a matter of daily occurrence, then, expressions of kindness and affection upon Mrs. Campbell's part towards Mr. and Mrs. Moore?" A. "Every day. *It was a very common occurrence.*"

(R., 85, 86:) "You rarely hear of persons being so devoted as that family were. *I have been around to several families, and have not seen such devotion;* * * * never a cross word spoken."

Thos. Janney Brown (*R.*, 88).

He visited the house nearly every week *during the last year of Mrs. Campbell's life* (R., 88) upon her return to the Moores from Philadelphia. He says he talked with her frequently, and—

"there was nothing that one could possibly discover about her mind that was in any ways weak or impaired. * * * She was as well preserved at that age as anybody I have ever had the pleasure of knowing" (R., 88).

The family played whist frequently, and he remembers on one occasion, as illustrative of her bright disposition, when she was about to retire in the evening, after they got

started at a game, she remarked, "When you divide the spoils don't forget the *widow*."

As to the relationship that existed in the family, he says (R., 89):

> "*I have never been in a household that was as lovely in my life, and I never went away from there without feeling that I had gained something by my visit. I never visited a house where there was any lovelier temperament or atmosphere than there was in that house, between the family themselves and Mrs. Campbell. She was one of the family, really, and one of the most beloved members of the family. They showed her every attention and were perfectly devoted to her, as she evinced by her words and actions.* * * *
>
> "*They treated her in the most tender way. Every one loved her. She was very bright.* * * *She had sufficient will power for one of twice her size.* * * *She was very decided in her opinions.*"

Sarah J. Reeder (*R.*, 90).

She attended to the washing, for Mrs. Campbell, at the Moores' (R., 90), and testifies to observing nothing but kindness and pleasantness existing always at this home. She was there when Mr. Campbell died, when his sister, Miss Eloise, died, as well as upon the death of Mrs. Campbell. She also speaks of the three rooms occupied by Mrs. Campbell in the third story as being about the nicest in the house—large bed-room, dressing-room, and bath-room (R., 91).

Miss Amy Ella Blanchard (*R.*, 92),

the authoress of several books and at one time editor of the Home Department of the *Church Standard* (R., 94), is the next witness (R., 92). She made—

> "quite long visits at intervals during the entire period of Mrs. Campbell being there" (at Mrs. Moore's); "was present when Mrs. Campbell died; * * * called upon her very often at Mrs. Russell's" (in Philadelphia).

Descriptive of Mrs. Campbell, she says (R., 92, 93):

"She was an unusually well-preserved person, *of remarkably clear mind—a person of a great deal of determination and decision*—and the relations between the families in both cases, both of Mrs. Russell's and Mrs. Moore's, I *always* found to be very pleasant in every possible way, * * * and her expressions of affection, I suppose, were unusual, because I think old people are frequently neglected, not because people wish to be unkind to them, but because, I think, they think they require less care than they do and less attention, and it is always appreciated by old people, because they seldom get it; and at Mr. Moore's I think *she was the central figure of the house, around which every thought circled.* She was the object of attention of the household. I think she was thought of every day, and they tried to think of some pleasant thing for her entertainment during the day, and *her devotion to every member of the family was marked.*"

"*She has more than once spoken to me of her affection for Mr. Moore*, and I know of one occasion that Mr. Moore had been in the room and had bid her good morning or good night she said, '*What a good, good man that is; I am so thankful for such a son;*' and when I went to see her at Mrs. Russell's—her family, of course, being mutual friends, mutually interested in the family—*she would speak of them all with the utmost affection*, when she had heard from them; how interested she was in their affairs, etc."

Then she testifies to how interested Mrs. Campbell was in all charitable objects, etc. (R., 93, 94).

Upon cross-examination (R., 94) she testifies that she was at the Moores' for about two weeks, *beginning about October* 10, 1885, just after the death of Miss Eloise, and remained till about the 24th of the same month.

This was during the time that Mrs. Baker *subsequently testified* that the second of those mysterious visits of hers took place *at the Moores'* (R., 45).

Upon redirect examination she says (R., 95, 96) that—

> "*Mrs. Mary I. Campbell was not at Mrs. Moore's when I got there.* I do not know when she left. * * * *She was not at the house during my visit at that time.* * * * No, sir; she was at Mrs. Tenney's, her granddaughter's, in Georgetown * * * and did not return to the Moores' at any time while I was there."

Annie Amelia Allen (*R.*, 96).

I called this witness simply to show, and she so testifies, that Mrs. Campbell was staying at Mrs. Tenney's, where the witness lived, from October 10, 1885 till about the middle of the following December, and was not then at Mrs. Moore's, as stated by Mrs. Baker in her corrected testimony above referred to.

Mrs. Elizabeth D. Beall (*R.*, 100).

She resides at 1670 31st street N. W., and is "*the next-door neighbor south of Mrs. Moore*" (R., 100).

> Q. "Who is the next-door neighbor north of Mrs. Moore?" A. "Mrs. Mary Duncan Bradley" (who was the first witness called by the complainants to *corroborate in advance* Mrs. Baker, their second witness, with the result before referred to).
>
> Q. "Over what period of time did your acquaintance extend?" A. "Well, I met Mrs. Campbell at intervals before she came to Georgetown to live. When she visited at her daughter's I frequently met her, and *knew her quite well* after her residence at her daughter's."
>
> Q. "Had you or not any opportunities to observe the kind of woman she was in character, and her mental and physical condition?" A. "*Yes; ample opportunity.*"
>
> Q. "Will you state how she impressed you as to her mental and physical condition, and what kind of character she evinced, to your mind, as to will power?" A. "When I first knew her she was very active, both physically and mentally; *always a woman of strong, decided*

character, but most affable in her manner always; very attractive old lady to me. Towards the latter part of her life she was not so active coming up and down the hill as at first. She walked, walked up and down the hill. Later in life she did not do that; she would use the carriage. *To the last of my seeing her she was most active in mind, a woman of most perfectly clear judgment, and not at all a person who was undecided in any way. A strong, firm, decided character, evincing no evidence of weakness, mentally, certainly, and only that of advanced years physically.*"

Then in reference to the family relations she says (R., 101) she observed—

"*nothing but the most constant affection and attention* due to any old lady and to their grandmother and mother; and, on the contrary, I made the remark once on my own porch that *Mr. Moore's* voice took quite a different tone in speaking to Mrs. Campbell. *There was nothing but deference and respect* which is not accorded many people of the same age. I *saw nothing but deference and respect and affection always.*"

Q. "Did she seem to be *in fear of Mr. Moore* at all?" A. "*Not at all.*"

Q. "Did she complain *ever* of any ill-treatment she received from Mr. or Mrs. Moore?" A. "*Never in my hearing or to my knowledge.*"

Then she speaks of hearing of her generosity to different institutions, and of her being a very benevolent woman.

Julia A. Russell, Christiana Virginia Moore, Alex. W. Russell, Fred. L. Moore (*R.*, 103, 105, 113, 117).

To the competency of these defendants objection was made by the complainants' counsel when I first called them to testify; but upon the hearing of the case, as before mentioned, the objection was withdrawn (R., 150).

They all deny most positively that they ever made any suggestion, even, whatsoever, to Mrs. Campbell about the giv-

ing of these bonds or any money to Mrs. Moore or Mrs. Russell (R., 103, 107, 113, 118), and they all in the same manner deny that there was ever any unpleasantness existing in their homes while the mother resided with them. They were perfectly devoted to her, and she to them. The only moneys that they received from her, outside of the usual Christmas gifts of $100, being $1,000 to each daughter in 1883, referred to in her letter of August 27, 1883 (R., 136), $100 at another time to Mrs. Russell, when she was under unusual expense by reason of the sickness of her son (R., 103), $125 each to Mr. Moore and Mr. Russell (a gold watch to the latter costing that amount), as special Christmas gifts, referred to in her letter to Mr. Moore of March 8, 1887 (R., 135, 136), in which she writes:

> "Now, I wish to say that at Christmas I gave Mr. Russell a watch which cost $125, and I would have given my other son-in-law the same amount in greenbacks, but my bank threatened suspension about that time, which denied me the pleasure. You will now accept a check for the amount, with best, *best* wishes for a happy Christmas. Better late than never," etc.

And $166.66 to each of said sons-in-law, to make up their commissions, on the settlement of Mr. Campbell's estate, to $500 apiece (R., 116, 119).

The exhibit filed with the answer of Moore and Russell, executors (R., 34, 35), shows that the three executors of Mr. Campbell's estate, Moore, Russell, and Maury, had charged $1,000 commissions on $49,030.90, the *face value* of the personal estate, in their account, which was $333.33 apiece. Mrs. Mary I. Campbell subsequently "*voluntarily*" gave the two sons-in-law $166.66 each, additional (R., 119), to make their commissions equal $500 each. The law allowed them to charge about $3,500, which is about 7 per cent. on the *face* value of the inventory, $49,030.90 (R., 9); the act of Maryland of 1798, chapter 101, subchapter 10, section 2, in force here, providing: "His (executor's or administrator's) com-

mission (which) shall be, at the discretion of the court, not under five per cent. nor exceeding ten per cent. on the amount of the inventory;" and I need hardly add that, as a rule, and certainly whenever asked for, the amount on which the commission is calculated is the *market*, not the *face* value of the different stocks and bonds composing the inventory.

They all testify to her lovely Christian character, to her generosity to numerous charities, and to her remarkably good health and strong will power.

Mrs. Russell identifies (R., 104) the letter written her by Mrs. Mary K. Campbell (R., 132) relative to the former unpleasantness in the family, created by previous "false charges," as well as the letter or statement (R., 132, 133) sent her by her mother, relative thereto and denouncing the same; and testifies to the different gifts she received from her mother, &c.

Mrs. Moore gives as the reason for her mother leaving her in June, 1886 and going to reside with Mrs. Russell, that she was obliged to close up her house on account of her own poor health, and that she and her family went abroad for quite awhile (R., 112); less than a year before which time, November 19, 1885 (R., 107), she (Mrs. Moore) had a serious surgical operation performed, and her house was closed up from about "*October* 10 *or* 15, 1885," *till* "*December* 13 *or* 14, 1885," *and her mother was then staying at Mrs. Tenney's* (Mrs. Moore's married daughter) (R., 106, 107). *This is the very time finally fixed by Mrs. Baker for the second one of those alleged "secret" conversations between her and Mrs. Campbell* AT MRS. MOORE'S (R., 45)!

As to any conversation having *ever* taken place between her and Mrs. Baker, as testified to by Mrs. Baker (R., 41), and Mrs. Baker's daughter (R., 141), she denies most positively and gives *three* very good reasons to sustain what she swears to (R., 106), viz:

1st. "She (Mrs. Campbell) never was in her dotage, her mind was always clear."

2d. "I never in my life heard of my mother saying anything against me to any one; therefore I could not have asked Mrs. Baker not to believe what I never suspected my mother of stating."

3d. "At the very period—in fact this period at which she (Mrs. Baker) has *finally fixed* for this conversation, I was in New York, in the hands of a surgeon. Our house was closed. My mother was spending about two months with my daughter, Mrs. R. B. Tenney, 3108 Q St., Mr. Moore and my daughter being in New York with me."

In reference to the relations existing between her husband and her mother she says (R., 108):

"*My mother was devoted to him; she spoke of him constantly. He took the place of her dead son. He certainly could not have been more affectionate and tender to his own mother than he was to my mother.*"

As to her mother's charitable disposition, she says:

Cross-examination (R., 112):

"*From my earliest childhood that was her main pleasure—helping those who were destitute. From my earliest childhood I remember it. She was always doing it*, and the charitable disposition extended not only to persons who were destitute, but to charitable institutions."

She is then shown a paper, in the nature of a little testament, written by Mrs. Mary I. Campbell (R., 59, 60), dated "Phila., *M'ch 22nd*, 1886," when the witness had just stated that her mother went to Philadelphia in *June*, 1886, and she is asked whether she "still adheres to her deposition" (R., 112), and she says that she does. The explanation is a very simple one. Her mother merely made a mistake, three months after the *new year* began, and put the figure 6 for 7 in the year. Many of us have made similar mistakes.

The witness also says (R., 112, 113): "My mother went to Philadelphia to pay a visit, after my father's death," but

that she cannot remember when it was. The letter written to Mr. Moore (R., 136) shows that it was during August, 1883.

Mr. Russell testifies (R., 114) to going from Philadelphia to Washington on October 5, 1885, upon word received from Mr. Moore, to transferring the bonds to Mrs. Campbell, and returning the same day, hurriedly, he being then in charge of the navy pay office in Philadelphia, and that he did not know of this gift from Mrs. Campbell till his wife returned to Philadelphia. He identifies also the receipt (R., 133) from Mrs. Campbell for these bonds.

Mr. Moore testifies (R., 118) to the relations existing between him and Mrs. Campbell as—

> "*the relations of a child to a mother, as far as it was possible. I think she thought of me as a son, and I did try to do a son's part by her in every way.*"
>
> Q. "Had she any fear of you?" A. "None whatever. *She had no fear of any one.*"

In answer to my inquiry as to how these bonds were transferred—after telling him that he could not testify as to any statement made by her to him—he states (R., 118) that "she went to the United States Treasury Department with me and made the transfer," on October 6, 1885 (R., 119).

He then explains (R., 119) how he had forgotten to file the receipt given the executors for these bonds by Mrs. Campbell, and that he only found it very recently—"five or six weeks ago."

The fact, as testified to by Mrs. Moore (R., 106, 107), that she and Mr. Moore went to New York just about this time, "between October 10th and 15th, 1885," to make arrangements for the surgical operation that was soon afterwards, November 19, 1885 (R., 107), performed on her, accounts, too, for his forgetting about it.

He then testifies (R., 120) to the fact, that at the time of the gift of these bonds Mrs. Campbell was worth about $89,000; that her entire personal estate had all been settled

up, the most valuable piece of real estate sold, and the proceeds distributed, *and that there only remains* the one piece of real estate—on E street N. W., which the executors have twice attempted to sell, but without success—there being no bidders—and which they placed in the hands of the real-estate firm of Graham & Campbell, the former being the husband of the complainant Edith G. Graham and the latter the complainant J. C. K. Campbell, to endeavor to sell for them. "And we were notified by counsel for the plaintiffs that we should not sell it" (R., 120).

In conclusion, he denies the silly story, told by Mrs. Baker (R., 42) and her daughter (R., 140), of listening at the door of Mrs. Campbell's room.

Return J. Meigs (*R.*, 116).

I called this witness merely to prove that the draft or form of the *codicil* to the will of Wm. H. Campbell (R., 133, 134) is all in the handwriting of the late John C. Kennedy, Esq., the father of the complainant Mary K. Campbell; the natural inference being that he also prepared for Mr. Campbell the draft or form of his *will* proper, *just as was first admitted by Mrs. Mary K. Campbell* (R., 54, 55), (the will and codicil being admittedly holographic).

I show this simply to corroborate what Mrs. Mary I. Campbell herself tells us in her statements (R., 59, 132, 133)—

> "that the charge which has been brought against my daughter Julia as having in any way, *either directly or indirectly*, used any influence connected with her father's will, *is false in every particular*. Especially with regard to the legacy of $5,000 each to her and her sister," &c.

Miss Mary Ella Moore (*R.*, 121).

The last witness called by us is the daughter of the defendants, Mr. and Mrs. Moore, and, *next to Mrs. Mary I. Campbell*, she is our most important witness, she having been

present when the conversation took place about the gift of these bonds. She says (R., 121):

> "I think grandma (Mrs. Campbell) was an unusually affectionate woman towards her children, and we certainly did everything we could to render her life happy with us. *She was very devoted to us all.*"
>
> "She was remarkably well for a woman of her years, and *mentally she was the companion of us all. I never saw as bright a person for her years in my life.*"
>
> "*She had a very decided will. It was almost impossible to influence her if she thought differently.* * * * *She often expressed herself as being very happy with them, and appreciated all that they did for her, and I think she was unusually fond of father.*"
>
> Q. "Did she ever evince any fear of him?" A. "Not the slightest. She did not fear anything but horses."
>
> Q. "Did you ever listen at her door to any conversation?" A. "I never did."
>
> Q. "Did you ever find any of the family doing it?" A. "Never."
>
> (R., 122:) * * * "I know that she gave to a great many objects and people, and was interested in all charitable objects, especially the poor. * * * Very often she talked over a great many charitable objects and people with me. * * * She left there (Mrs. Moore's) between the 10th and 15th of October, 1885, and stayed at Mrs. Tenney's until the middle of December."

She then identifies the handwriting of the different letters and statements introduced by me in evidence, including the paper marked "Def'ts' Exhibit No. 5" (R., 123).

> Q. "Miss Moore, I hand you paper marked 'Def'ts' Exhibit No. 5,' and ask you to state, as near as you can remember, the conversation that took place, and when it took place, that gave rise to the writing of that paper." A. "Well, it was on the evening of October 5, 1885. My father and uncle had attended to business of grandma's at the Treasury, and when my father returned he told my grandmother of the business."
>
> Q. "Did all this take place in your presence?" A.

"It was generally talked of. I think I heard it all. It was after dinner. Grandma usually came down to dinner those days, and we were all sitting in the back parlor—my mother, my grandmother, my father, my aunt, Mrs. Russell, and myself—and grandma, with a little formality, said: 'Mr. Moore, there is a little matter of business I would like to attend to before Julia returns to Philadelphia'—her daughter—and then she said she thought she would like to give them the bonds that had that day been transferred to her. I was surprised beyond everything, and so were my parents and my aunt, and everybody was greatly pleased about the matter. My parents were surprised, and expressed themselves appreciatingly and gratefully; and after a few minutes my mother said to my father, 'Don't you think it would be well to have something in writing regarding this matter, as we have had this previous trouble with Mary (Mrs. Mary K. Campbell) about the legacy of $5,000.' My grandmother leaned over, not having heard it all, and said, 'What was that about Mary?' My mother then repeated it to her and asked her if she did not think it would be well to give something in writing so stating, and she said, '*Oh, yes, certainly, by all means.*' And she stayed there a few minutes quietly, and went to her room earlier than was her custom—I suppose to think the matter over. The next day she went with my father to the Treasury Department on this business, and afterwards wrote this paper—at least I saw the paper a short time afterwards * * * in my mother's possession."

This important paper (R., 134), all in the handwriting of Mr. Mary I. Campbell (R., 123), and before referred to by me, is as follows:

"GEORGETOWN, D. C., *Oct. 6th*, 1885.

"I have today voluntarily, without suggestion from any one, given to my two daughters the 4½ and 4 per cent. United States bonds coming to me from the estate of my husband, amounting to thirteen thousand dollars at par, thus equaling their share with the amount received by their brother and his family.

"MARY I. CAMPBELL."

(At the request of counsel for complainants the session was adjourned till the next day, to enable the examiner to write out the testimony of this witness before cross-examination.)

The testimony being ready, the *cross-examination* began the next day, and in response to questions from complainants' counsel, relative to their witness, Mrs. Laura Ellen Baker, she says (R., 124):

> "My grandmother always knew her. We have known her all of our lives, and she used to come to see grandmother quite frequently. Grandma was very kind to her. *She was always doing for her in every way; felt very sorry for her. She had a very hard life.*"
>
> Q. "Was she any connection of your grandmother?" A. "Well, my grandmother's brother married a third wife—her mother-in-law."
>
> Q. "If Mrs. Baker told the truth in her representation of what your grandmother said to her, have you any doubt what your grandmother said to her was the truth?" A. "My grandmother was a very reticent woman about her business affairs. She did not talk to the family about them. *Whatever my grandmother told her was the truth. I don't believe she told her anything.*"
>
> Q. "That is another thing." A. "Well, I stick to that."

She is then asked to repeat what was said by her grandmother on the evening of October 5, 1885, and she says (R., 125):

> A. "She said, Mr. Moore I have a little matter of business I would like to arrange, or settle, before Julia returns to Philadelphia. I wish to give those bonds which were transferred to me today—divide those bonds between Julia and Jennie to make them equal with their brother. *That was the import.*"

Counsel for complainants compare the present case to the one decided by this court, reported in 8 How., 183—Taylor *vs.* Taylor *et al.*—because of the giving of this paper by the

mother. I respectfully submit that the cases do not resemble each other at all, and when I come to discuss the question of undue influence I will show the marked difference between the two, merely observing here that the testimony of Miss Moore, explaining the circumstances attending the giving of this paper, taken in connection with the fact that the same mother had found it necessary only a few years previous thereto, as before shown (R., 48), to make a somewhat similar written declaration (R., 132, 133) to relieve one of these same daughters from a similar false charge, as embodied in the allegations here, when this same daughter-in-law had accused her of having unduly influenced the father to leave her and her sister $5,000 by his will, shows that it was a most natural and proper thing to do, and in the light of past and present experiences it would have been very unwise for them not to have requested "something in writing" from their mother, showing the circumstances attending the giving of these bonds.

Upon the completion of the cross-examination of this witness the defendants closed their case.

What, briefly, have we proved?

1*st*. *That even this alleged conversation* which Mrs. Baker testifies she had with Mrs. Mary I. Campbell, in which Mrs. Campbell is said to have stated that she had, in compliance with her previous promise to them, "divided $12,000 equally between Mrs. Moore and Mrs. Russell" (R., 41), could not have taken place, as Mrs. Baker *first* testified, "less than a year before Mrs. Campbell's death," in her room in the *third* story "under the mansard roof" (R., 40), for the reason that she did not occupy a room there during this period, her room being on the second floor (R., 92, 93, *et al.*).

2d. It could not have taken place at the Moore house "a month or six weeks after the death of Miss Eloise Campbell," as *afterwards* testified to by this same Mrs. Baker (R.,

44, 45), because, as we have shown, Mrs. Campbell was not there then, but was staying at her granddaughter's, Mrs. Tenney's, the Moore house being practically closed (R., 76, 94, 95, *et al.*).

3d. From the lovely Christian character of this old lady, as evidenced by her own letters, as well as by her will (R., 12, 13), *and the testimony of all of the defendants' witnesses*, she did not tell this Mrs. Baker, or any one else, any such silly falsehoods as Mrs. Baker swears to, at any time nor at any place. Leaving out entirely the testimony of all of the defendants' witnesses, and *judging her solely by her own letters and written declarations*, what an old hypocrite and story-teller Mrs. Mary I. Campbell would have been if what Mrs. Baker has sworn to was the truth!

But that she was one of the loveliest of truly Christian women, "a woman of strict integrity and truthfulness," is admitted even by the complainants' own witness (R., 143).

Mrs. Baker is "contradicted flatly," as her own daughter afterwards tells us (R., 143), by *Mrs. Mary I. Campbell herself*, as well as by about all of the witnesses for the defendants, and by one of the complainants' own witnesses, Mrs. Bradley (R., 38, 39).

Realizing all this, what do they do next?

Complainants' Testimony in Rebuttal.

On November 25th, *twelve* days after I had announced our case closed with the cross-examination of Miss Moore, they recalled—

Mrs. Mary K. Campbell (*R.*, 137).

Direct examination (R., 137):

Q. "Mrs. Campbell, one of the witnesses examined by the defendants, who was for a long time a nurse of the elder Mrs. Campbell, testified that upon one occasion

she saw you in Mrs. Campbell's room, and that Mrs. Campbell called for her money-box and gave you *two or three dollars.* State whether *such an occurrence* ever transpired." A. "Never; if she *sent me money* it was by check, through Mr. Moore."

Q. "That did not transpire?" A. "No, sir."

And no one has said that it did. By turning to the testimony of the witness referred to, Mrs. Carrie Carlisle (R., 82, 83), before mentioned by me,—and who was a maid, not a nurse,—it will be seen that the witness did not say that Mrs. Campbell gave Mrs. Mary K. Campbell "*two or three dollars.*" She did not know *how much* she gave her.

Q. "You remember Mrs. Baker's examination? *She testified that a short time after the death of Miss Eloise Campbell that she was sent for by Mrs. Mary I. Campbell,* and she went to see her, and she testified what took place at that visit. Do you *know* of anybody else besides Mrs. Baker *who was present at that time?*" A. "Yes."

By referring to the testimony of Mrs. Baker it will be seen that she did not say that at the visit at which this conversation is alleged to have taken place "that she was sent for by Mrs. Mary I. Campbell." She says, "*Sometimes* she used to write to me to come to see her" (R., 40); and, furthermore, she did not *then* say that this alleged visit was "a short time after the death of Miss Eloise" (1885), as complainants' counsel puts it, but that it was "some months, *not as much as a year,* before the death of Mrs. Mary I. Campbell" (1893) (R., 40).

Now, note particularly again the next question and answer (R., 133):

Q. "When did you *first find* that out?" A. "Well, I *first* found it out *when this subject was agitated, this suit being brought,* but I do not know what time it was."

This is "flatly contradicted" by *their* next witness, Miss Baker, as will be seen from her testimony (R., 145), which I shall refer to presently.

This does not suit counsel for the complainants, so he puts the question to her again:

> Q. "My question is, when did you first find out that this third person knew of this conversation about which Mrs. Baker testified?" A. "After Mrs. Baker *testified*, I found out positively that a third person was present."

Mrs. Baker finished her testimony, in which she said: "I WAS ALONE" when this alleged conversation took place, on October 24 (R., 38). *One week afterwards*, October 31, she comes back and changes it only as to the *times* when it took place (R., 45), but does not even then pretend that any one was with her, but says, "*I* went to see her," *and she does not make any change in the part of her deposition in which she declares unequivocally, and in answer to the question of complainants' counsel, "I was alone!"*

The complainants held another session "after Mrs. Baker testified," viz., on October 28 (R., 52), and they did not close their testimony-in-chief till after both of their witnesses, Mrs. Baker and Mrs. Mary K. Campbell, had been called again, three days afterwards, October 31 (R., 57), and the examiner had read this testimony all over to them (R., 149, 150).

Then the witness tries to make it appear that Mr. Campbell by doing certain things in his lifetime, *in* "1868" (R., 138), had made the shares of the daughters and son equal. I submit, in the first place, that such testimony as she gives proves nothing of the kind, *even as of that date*, and it certainly does not prove that he did nothing on the son's account after 1868 and before his death, in 1881; but even if that was all true, *until they prove that Mrs. Campbell made her will "in conformity to an agreement" with Mr. Campbell*, as they allege in the seventh paragraph of their bill (R., 3), I

take it that Mrs. Campbell had the right to do whatever she pleased with any or all of the property left her by her husband, just as this witness says she could, and for this reason also she said she did not think Mr. Campbell's will "a just will" (R., 48).

She is next asked as to the influence alleged to have been exercised over Mrs. Campbell by her daughters in reference to a Miss Mason after her return from Philadelphia, and in substance she states that "she had *repeatedly* befriended her at former times," but "never gave her anything after that" (R., 139).

By referring to two of the letters *introduced in evidence by the complainants* it will be seen that Mrs. Mary I. Campbell had her suspicions about this Miss Mason some time before her return to the Moores' (R., 61), and this witness, by the above *admission, contradicts what she herself testified to when first called*, in answer to a question by me, relative to Mrs. Mary I. Campbell's charitable disposition (R., 48), viz:

> *"I never heard of her being very charitable before her husband's death, nor after her husband's death, except to me."*

So now they have shown by this witness that she, one of the complainants and the mother of all the rest of them, *knew* "when this subject was *agitated*—this suit *being* brought"—that some one accompanied Mrs. Baker to Mrs. Mary I. Campbell's and was present when this alleged remarkable conversation took place.

I observe, then, 1st, they should have introduced the testimony of this other alleged witness before closing their case-in-chief; 2d, it "contradicts flatly" the testimony of their other witness, Mrs. Baker, who has sworn "I WAS ALONE" (R., 41).

Well, who is this alleged witness that they say *now* "was present at *that* time"?

Miss Eliza Burgess Baker (*R.*, 140).

The daughter of Mrs. Laura Ellen Baker, who has deliberately and repeatedly declared "I WAS ALONE!"

So they propose to contradict, through this girl, her mother, their other witness, as well as Mrs. Mary I. Campbell herself. To say that such a step requires *very much nerve*, is, I think, putting it quite mildly!

What, briefly, does she swear to?

She is 27 years old (*i. e.*, she was *16* years old when Mrs. Mary I. Campbell and Mrs. Moore are alleged to have said all those mean, cruel things against each other and *in her presence as secrets*), and resides with her mother at 1932 Fifteenth street N. W. (R., 140).

Direct examination:

> Q. "Please state the circumstances under which you went the first time to see Mrs. Campbell with your mother." A. "After the death of Miss Eloise Campbell my mother got a letter from Mrs. Mary I. Campbell. She asked my mother to come and see her and she told her when she got there that *she had divided* the money that Mr. Campbell had left for the support of his *children*—(Mrs. Baker said '*his sister Eloise*' [R., 41, 42])—between Mrs. Russell and Mrs. Moore, as they had made her promise to do, and they worried her so she did it to prevent being worried * * * As near as I can remember, it (this alleged conversation) was within *two or three weeks* of Miss Eloise's death; it was very shortly afterwards."

The mother of this witness said, *in her* CORRECTED *testimony*—after first telling us that it occurred "not as much as a year before her (Mrs. Mary I. Campbell's) death" (1893) (R., 40)—that this part of the alleged conversation took place

"a month or six weeks, I think," after the death of Miss Eloise (1885) (R., 45).

As we conclusively proved that Mrs. Mary I. Campbell was not at the Moores' from about October 10 to December 15, and that the house was closed up, this witness endeavors to help her mother out of that dilemma. But observe, particularly, that *this is the very part* of this alleged conversation in which Mrs. Baker swears "I WAS ALONE!" (R., 41).

> Q. "State whether you were at Mrs. Moore's to see Mrs. Campbell with your mother after that." A. "Yes, sir; when my mother went into the room she told her to come close to her and to listen to what she had to say and not to answer, *for there was always some one listening at the door.* She told her she was going to Philadelphia to live with her other daughter; that Mr. Moore and Mrs. Moore treated her unkindly; that neither wanted her there, and that she was afraid of Mr. Moore, and she hoped she would be happier in Philadelphia than she had been here. I should have stated also that she wrote to my mother to come before she went, and told her in the letter she had something to tell her, *and while the old lady was telling her the tears were rolling down her face*" (Mrs. Baker must have forgotten to mention that "the tears were *rolling* down her face") "and then, when we went downstairs, Mrs. Moore asked my mother if her mother had been talking against the Moores; that if she had, not to mind her, for she was in her dotage, and that she went around the neighborhood talking about them."

So the only part of the whole alleged story told by Mrs. Baker, in three separate visits by her to Mrs. Campbell, that this witness was *not* present at, was the *first* interview before the death of Miss Eloise. Thus the daughter is made to contradict her own mother as "flatly" as, she tells us afterwards (R., 143), her mother is contradicted also by Mrs. Mary I. Campbell herself, *and the mother is not recalled* to explain or reconcile, if she can, these diametrically opposed

versions of these alleged interviews and tell us whether or not she *still* adheres to her own *amended* deposition.

Let's see if this witness is contradicted any more, for we have just shown that she is contradicted by her own mother as well as by Mrs. Mary I. Campbell.

> (R., 141:) Q. "Did you see Mrs. Campbell after she returned from Philadelphia?" A. "Yes, sir; once. She was *very childish* then."

How does this agree with the testimony of numerous witnesses who saw and talked with this old lady frequently after her return from Philadelphia, before mentioned by me? *How does it agree with the testimony of their own witness, Mrs. Bradley* (R., 38, 39)?

Then I asked her a few questions (R., 141):

> Q. "Miss Baker, your mother knew *all* that you have testified to just now, *all the time*, didn't she?" A. "Yes, sir; I believe so. She *certainly* knew it at the time."
>
> Q. "How did you happen to be called to testify just now—at this time?" A. "Because I did not mention to *any one* that I knew about it *until I heard that my mother made mistakes in her evidence.* I have never been in a case of this kind before. I had never been in a law case, and I did not want to be drawn into it *unless it was absolutely necessary to corroborate my mother's statement.*"

Observe that she says *she* did not mention it to *any one* until *after* her mother had testified. How, then, may I ask, did Mrs. Mary K. Campbell know about it *before* this suit was brought—"being brought, * * * when this subject (of a suit) was agitated"—as she says she did (R., 138)? And who told this witness "my (her) mother *made mistakes in her evidence*"? And she only testifies *because* "*it was absolutely necessary to corroborate my mother's statement!*"

> (R., 142:) Q. "Have not you and your mother talked these matters over repeatedly to each other?" A. "Of course, *naturally* she spoke of it."

Q. "She knew all you have testified to?" A. "At that time; yes, sir."

Q. "Now, as I understand you, you were in the room when Mrs. Campbell said all this to your mother?" A. "About *having divided* the money?"

Q. "Yes." A. "Yes, sir; I was."

This is the very one of the alleged interviews in which her mother swears "*I was alone*" (R., 41).

(R., 143:) Q. "What kind of a lady was Mrs. Campbell as to *truthfulness*, do you think?" A. "Well, I should say that *she was a person who had very strong regard for the truth*, as far as I ever knew anything about her, and I knew her, up to the time of her death, all my life."

Q. "*Anything she said you would rely upon it implicitly?*" A. "*Yes, sir.*"

Q. "*That is, she was a woman of strict integrity and truthfulness?*" A. "*Yes, sir; I should say so.*"

Then, against such testimony as this witness and her mother furnish us, I put the testimony of this old mother, who *at this very time, October* 6, 1885, states:

"I have today, *voluntarily, without suggestion from any one, given* to my two daughters the 4½ and 4 per cent. U. S. bonds," etc. (R., 134).

Then I ask her where she has been and how she came to testify, and she answers (R., 143):

"I have been *home. I testified simply to corroborate my mother's testimony. I thought I ought* to come here to testify to *corroborate* my mother's testimony, *as that letter had been shown* (from Mrs. Mary I. Campbell relative to the gifts of these bonds above referred to [R., 134]) to have been written by Mrs. Campbell, WHICH CONTRADICTED FLATLY MY MOTHER'S TESTIMONY, and I felt, in justice to my mother, I ought to testify to what I had heard."

Q. "*Who made that suggestion to you—that you ought to testify to corroborate your mother?*" A. "I think it was you, Cousin Mary—*Mrs. Mary K. Campbell.*"

"*Ought* to testify to *corroborate* her mother," who, she has just told us, "*she heard had made mistakes* in her evidence," and who, she says, has been "*contradicted flatly*" by Mrs. Mary I. Campbell herself, who, she also says, "was a woman of *strict integrity and truthfulness—anything she said you could rely upon it implicitly*"—*because* "*it was absolutely necessary to corroborate my mother's statement!*"

Is this not a most apt illustration of—

> "Whatever one woman says another woman is determined to clinch."

Redirect (R., 144):

> Q. "Miss Baker, Mr. Cragin asked you if you had not frequently spoken with your mother about this testimony. You answered yes. Now, when did you speak with her about this testimony?" A. "Well, she asked" (without permitting the witness to finish her answer she is interrupted with the question)—
>
> Q. "Was it before or after your mother testified here?" A. "*She would tell me what occurred down here, you know*" (she is again interrupted with the question)—
>
> Q. "Was it before or after?" She answers finally: A. "It was after, *because she would tell me what had occurred down here*, and that is how I came to tell what I knew about it."

But Mrs. Mary K. Campbell testifies that *she knew about it* "when this suit was *being brought*" (R., 138). Who told her? And if, as this witness says, *her mother* "*would tell me what had occurred down here*"—*i. e., while her mother and Mrs. Mary K. Campbell were giving their testimony*—then she and her mother had talked it all over *before* her mother, *a week afterwards*, appeared *and had the examiner read her testimony all over to her, and made all of the corrections that she desired, and still insisted upon it*—"*I was alone.*"

Then she says (R., 144) that she and her mother *did* discuss with each other about the alleged *first* interview at

which she was *not* present, but that they did *not* talk about the other two interviews at which, she says, she *was* present. Is this at all reasonable or probable?

> (R., 145:) Q. "*Did Mrs. Mary K. Campbell or any of the plaintiffs in this suit*, who are her daughters, know of your having been present at these interviews or know what you remember with respect to them until after your mother had testified?" A. "*They did not know that I had been present;* no, sir; but *I told her, Mrs. Mary K. Campbell*—let me see—*some months before this examination first began*, I told her I knew something about the case, but unless it was *absolutely necessary* I did not want to be drawn into it. *I did not tell her I was present* or what I knew. I simply told her I knew something about it. I did not tell her anything about it. *I did not tell her that I was present*, but I told her I knew something about it."

How does this agree with the statement of their other witness, Mrs. Mary K. Campbell, who has just testified *in answer to questions of complainants' counsel* (R., 138):

Q. "Do you *know* of anybody else, besides Mrs. Baker, *who was present* at that time?" A. "Yes."

Q. "When did you first find that out?" A. "Well, I first found it out when this subject was *agitated*, this suit *being brought*."

I leave them to reconcile such testimony.

Mr. Thomas Brooke (*R.*, 146).

The last of the complainants' witnesses is Mr. Thomas Brooke. *He resides with Mrs. Baker and her daughter* at 1932 15th street N. W., and is a distant connection of hers by marriage (R., 146). He, like Miss Baker, is brought forward to *corroborate* (so called) Mrs. Baker. I respectfully submit that even *if* Mrs. Baker did then say all that he swears to his testimony is clearly incompetent. He simply says that Mrs. Baker told him certain things *that she said*

Mrs. Mary I. Campbell told her. Under the facts, as developed by the conflicting testimony of all three of the complainants' witnesses, Mrs. Mary K. Campbell, Mrs. Baker, and Miss Baker, particularly the latter two, the rule of evidence permissible under certain circumstances for the purpose of corroborating a witness does not here apply. A witness impeached by her own contradictory sworn statements cannot be corroborated by her own declarations not under oath, and you cannot make a falsehood the truth by repeating the falsehood any number of times to any number of persons.

But he does not testify even to the same alleged interviews that Mrs. Baker does.

Briefly he says, in answer to questions by complainants' counsel (R., 146, 147):

> "She (Mrs. Baker) was in the habit of mentioning—talking about her trip and her visit—that she had been to Mrs. Campbell's, and in that conversation (the first) she spoke of Mrs. Campbell, saying she was very much worried—harassed—by her two daughters, Mrs. Russell and Mrs. Moore, about that money. I cannot say that harassed is the exact word she used, but that is the meaning of it—harassed by her daughters continually to divide that money if she outlived Miss Eloise Campbell."
>
> Q. "Now, do you know of Mrs. Baker paying any other visit to Mrs. Campbell?" A. "Yes, sir; she got another letter from Georgetown, asking her to come in, and she did, and her daughter went with her."
>
> Q. "State what took place after Mrs. Baker and her daughter returned from that visit (the second)." A. "She said that she had given that $12,000 that was left; that they had worried her so she had divided the money between the two daughters."
>
> (R., 148.) Q. "Do you know of any other occasion in which she went to see Mrs. Campbell?" A. "Yes, sir. The *third* time. A third letter was written to her. Her daughter went with her on that occasion, and she gave her some furniture she was speaking of."

Q. "Was there anything said about *that visit* by Mrs. Baker?" A. "*Yes*, as it was her habit of talking with the family after her trips, and particularly her visit to Mrs. Campbell; always visited Mrs. Campbell. At that time, in the first visit, my aunt was alive—her sister-in-law. Of course, she naturally inquired. She spoke *then* (*'the third time'*) *that she had given it; that Mrs. Campbell told her that she had divided that money between Mrs. Moore and Mrs. Russell.*"

This is the alleged "*third*" visit, remember, that he is asked about, and he says:

"*She spoke then that she had given it;* that Mrs. Campbell told her that she had divided that money between Mrs. Moore and Mrs. Russell." *Nothing more.*

Does this corroborate Mrs. Baker in what she testifies to having occurred on this alleged third visit? Not at all. She says, in her final *corrected* statement, as to what took place *on the third visit:*

"Then just before she went to Philadelphia she told *me of the unkind treatment of Mrs. Moore and Mr. Moore*" (R., 45).

It will be observed, too, that according to this witness Miss Baker, who is *now* alleged to have accompanied her mother on the last two of these interesting visits to Mrs. Campbell, has never said a word about the startling disclosures made in her hearing and presence *as secrets* by Mrs. Campbell. She does not seem to have joined in at all in these pleasant family conversations upon their return home, but she recollects, however, more about them *now* than *even* her mother does, for she remembers—

That SHE WAS WITH HER MOTHER, whereas her mother insists upon it, "*I was alone.*"

And she saw the "tears ROLLING *down her* (*Mrs. Campbell's*) *face*" while this old lady was narrating for their benefit her

alleged "tales of woe," and Mrs. Baker, it appears, has also entirely forgotten this minor occurrence!

So much for this so-called *corroborating* testimony.

After numerous meetings, set by counsel for complainants, and adjournments at his request, without taking any more testimony (R., 148, 149), he finally closes his case on December 12, after introducing two more immaterial letters in evidence (R., 70, 71).

I did not deem it necessary to introduce any further testimony in rebuttal.

Having now placed before the court the material *facts* in this case as brought out by the testimony, the application of the law is, I think, very plain.

I.

AS TO THE WILL OF WM. H. CAMPBELL.

The complainants having themselves, through one of themselves, disproved the fifth allegation of their bill (R., 2) viz., that—

> "Mr. and Mrs. Wm. H. Campbell *always declared* that their property should be *equally* divided between their three children, Leonidas, Virginia, and Julia,"

to wit (R., 50):

> "Mr. William H. Campbell told me (Mrs. Mary K. Campbell) that he intended leaving '*more*' to his son than to his daughters"—

precisely what Mrs. Mary I. Campbell tells us he did do (R., 59, 132, 133), and having failed to offer a word of testimony to sustain the sixth and seventh paragraphs of their bill, which are really the corner-stone of their case (R., 2, 3), viz., that—

> "*for the purpose of carrying out this intention* the said *Wm. H. Campbell*, on the 16th day of March, 1878, made and published his last will and testament,"

and that—

> "*Mary I. Campbell* made and published her last will and testament, *in conformity to the aforesaid understanding and agreement and for the purpose of carrying out the terms and provisions of the will of Wm. H. Campbell*,"

we certainly have nothing to do here with the will of Wm. H. Campbell. He left everything, with the exception of a few legacies, absolutely to his wife, and says nothing whatever about any such pretended agreement (R., 9, 10, 11), and she had a perfect right, then, to do whatever she pleased with the property so left her without consulting any of the parties to this suit, as admitted by the complainant Mrs. Mary K. Campbell (R., 48).

II.

GIFTS, ADVANCEMENTS, AND ADEMPTION OF LEGACIES.

> "The two elements necessary to constitute a perfect gift are the *intention* to give and the *delivery* of the thing given."
>
> Pickslay *vs.* Starr, 149 N. Y., 432.

The gift of these bonds by Mrs. Campbell to her daughters, October 6, 1885, cannot (any more than can the gifts of $1,000 and $100 to them in 1883—the only other sums of any kind received from her except the usual Christmas gifts of $100 to all) (R., 103, 108, 136) be considered an advancement to them, as claimed by the complainants in the fourteenth paragraph of their bill (R., 4, 5)—

> "and *pro tanto* an ademption of the legacies bequeathed to them respectively, and must be accounted for as such in the final settlement of the estate,"

because she herself says that she did not so intend it, but, on the contrary, she declares she did it for the express purpose of

"*equaling* their share with the amount received by their brother *and his family*" (R., 134).

But if she had said nothing as to what her *intentions* were, even then it could not be regarded or treated as an *advancement*, because that doctrine has reference only to cases of "*total intestacy.*"

> "An advancement is a giving by anticipation the whole or a part of what it is supposed a child will be entitled to receive on the death of the parent making it and dying *intestate.*"
>
> Clark *vs.* Wilson, 27 Md., 693.
> Stewart *vs.* Pattison, 8 Gill, 46, 56.
> Hayden *vs.* Burch, 9 Gill, 79, 83, 84.
> Johnson *vs.* Belden, 20 Conn., 324.
> Thompson *vs.* Carmichael, 3 Sand. Ch., 120.
> A. and E. Ency. of Law, vol. 1 (new ed.), 760, 761, 763.

III.

UNDUE INFLUENCE.

So we come next to the question of undue influence—that is, that the two daughters, aided and abetted by their husbands, perpetrated a fraud upon their mother, and by such means illegally obtained from her $15,000 worth of United States registered bonds.

The transfer of *registered* United States bonds is, I submit, as is well known, about as formal a matter as the transfer of real estate. (See certificate of acting Register of Treasury (R., 36) as to how this transfer was made.) The burden of proof is clearly upon these complainants to sustain this charge (Hammond *vs.* Hopkins, 143 U. S., 224, 273, *ante*), particularly where, as in this case, the gift is *from the parent to the child*, the *presumption* then being "that it was caused

by the ordinary promptings of affection," and was an "intended benefit"

Jenkins *vs.* Pye, 12 Peters, 241;
A. & E. Encyc. of Law, vol. 27, p. 489;
Saufley *vs.* Jackson, 16 Tex., 579;
Yeakel, ex't'r, *vs.* McAtee, 156 Pa., 600;
Sayre *vs.* Hughes, 5 Eq. Cases, L. R.. 376;
Teegarden *vs.* Lewis, 145 Ind., 98, and numerous other authorities.

But I respectfully submit that the evidence *proves* as clearly, almost, as any problem in mathematics can be *demonstrated* that Mrs. Mary I. Campbell, who was admittedly "a woman of strict integrity and truthfulness," according even to the testimony of the *complainants* (R., 143), never told Laura Ellen Baker and her sixteen-year-old daughter, Eliza Burgess Baker, any such silly falsehoods as they swear to, and Mrs. Campbell herself declares that she never did (R., 134); nor is it probable or reasonable that Mr. Moore and Mr. Russell "aided and abetted" their wives in any such mean, underhanded scheme as testified to by these two witnesses, and at the same time declined to accept about $3,500 legally due them by this same Mrs. Mary I. Campbell as commissions on the settlement of Mr. Campbell's estate, charging instead only $1,000 (R., 35).

But, to show the utter absurdity of this whole charge, let me apply a little mathematics to the matter at issue.

The claim of the complainants, in brief, is that in the year 1885 the daughters received the equivalent of $15,000—*i. e.*, that the two daughters each received $7,500, whereas they (the daughters) should have received $5,000 each, and the daughter-in-law, representing the deceased son, should also have received $5,000. In other words, that Mrs. Moore and Mrs. Russell *then* received $2,500 *apiece more than they should have received.*

Now, as the daughter-in-law acknowledges that Mrs.

Campbell gave her $1,000 in the summer of 1891 (R., 54, 58, 59), this will leave the excess, *according to their theory* ($2,500 — $1,000), $1,500 *in favor of the two daughters out of an estate "worth about* $89,000" (R., 120), and that while resorting to such alleged contemptible means to obtain this money the sons-in-law voluntarily threw away about $2,500 that was legally due them as commissions. Is this reasonable?

But let me go a step further:

According to the testimony offered by the complainants themselves we have this *admitted* state of facts *known and "believed" by them* (R., 55, 56, 59) *when they filed this bill:*

The son and his family had received, in excess of the daughters, prior to the gift of these bonds (R., 55, 56, 59).....	$6,897 62
And subsequent thereto (in the summer of 1891) (R., 48, 58, 59).....	1,000 00
Making a total of.....	$7,897 62
The daughters, *in the meanwhile*, had each received the equivalent in bonds (R., 4) of.....	7,500 00
Leaving an excess in favor of the son's family of	$397 62

Now, let us look at the other side of this case:

The evidence shows, as before stated, that shortly after the death of Mr. Campbell this same daughter-in-law, who is one of the chief figures in the present suit, accused one of these same daughters of this old lady of practicing a fraud on the father, which provoked even the anger of Mrs. Mary I. Campbell, and she writes to the daughter-in-law, as well as to the accused daughter, denying the charge, *declaring it "false in every particular,"* and also adding:

> "We did it in justice to them, and even this amount did not make them equal to him, as the books now show $6,897.62 *more* than either of them (the daughters) received" (R., 59, 132).

And this daughter-in-law states (R., 56) that "*she believed* what Mrs. Campbell had written in that letter."

Now, to apply, in the same way, a little mathematics:

The two daughters, shortly after this mother had written this letter, each received from her the equivalent of $7,500, making a difference ($7,500 — $6,897.62) of $602.38 only in their favor between what they received and what the son "and his family" had received up to about the time when Mrs. Campbell sent those two similar letters or statements to her falsely accused daughter and this daughter-in-law. What she gave her daughter-in-law, between the time of sending these duplicate statements and the gift of the bonds to her daughters, we do not know; *but she declares*, in the paper accompanying the gift of the bonds, "thus *equaling* their share *with the amount received by their brother and his family*" (R., 134).

She knew what she and her husband had given her daughters *and her son's family*, and here we have the unqualified statement from her that by the gift of these bonds she had, *in October, 1885, equalized* the shares of her three children, *just as this daughter-in-law* FIRST *testified that Mrs. Baker had told her she had been informed by Mrs. Mary I. Campbell* (R., 47).

Now, as mentioned above, this representative of the son's family received from Mrs. Campbell, in the summer of 1891, $1,000 additional, *the daughters receiving nothing in the meanwhile*, the $1,000 that their mother gave each of them being two years prior (August, 1883) (R., 136) to the date of this statement of Mrs. Campbell (October, 1885) (R.,134). *So, as a matter of fact, the son's family have received $1,000 more than either of the two daughters.*

The admitted facts that both Mr. Moore and Mr. Russell, the sons-in-law of this old lady, rendered her gratuitously every service in their power in the proper care and management of the estate (R., 108, 109, 119), and that they at her request made disbursements for her, as she says in her letter to Mr.

Moore of March 8, 1887 (R., 135, 136), "I would have left part of the amount in your hands, as I wish you to dispose of a portion for me occasionally," furnishes no ground for any such imputation as the complainants by innuendo seek to make against them in their bill any more than does the fact that Mr. Campbell had in his lifetime seen fit to loan his son-in-law, Mr. Moore, $5,000 on his notes (R., 9, 34), which indebtedness was duly returned and accounted for by him as one of the executors of Mr. Campbell's estate (R., 35), furnish any foundation for suspicion or fraud, as hinted at by counsel in the argument below.

An examination of the following cases will show that from such relation of the parties and from other relations much more open to just criticism no such construction as claimed by the complainants is placed upon the acts of those who occupy somewhat similar relations with the donor as existed here.

The case of Hunter *vs.* Atkins, 3 Mylne and Keen, 113, decided in 1832, is an old *leading* English authority on this subject:

> "Gift by deed, subject to a power of appointment by the donor, from a person *upwards of 90 years of age to a confidential agent*, who had for many years been in habits of friendship with the donor, *without the intervention of a disinterested third person*—the solicitor who drew the deed being the solicitor of the person who took the benefit under it—declared void by the master of the rolls, but supported under all the circumstances upon appeal."

Sayre *vs.* Hughes, 5 Eq. Cases, L. R., 376 (*ante*). Here we have the gift made *after* the execution of the will, about which so much was said by counsel in their argument below:

> "A widowed mother, *after making her will* in favor of her two daughters, transferred East India stock which had stood in her own name into the names of herself

and the unmarried daughter, and died. Held: that *there was a presumption of intended benefit* to the unmarried daughter, which was unrebutted, and that the stock belonged absolutely to her."

Teakel, ex'tr'x, *vs.* McAtee, 156 Pa., 600 (*ante*):

"A mother (87 *years old and blind*) gave certain bonds and stocks to her daughter. *The evidence affirmatively shows the voluntary character of the gift. It also appears that the mother was not impoverished by the gifts, and that she made no complaint* during the life of the daughter that she had not retained property enough to afford her a comfortable maintenance. *From the evidence it appears that the mother had a strong will and was not controlled by her daughter or anybody else. Held: that the mother was not entitled* after the death of the daughter to have the gifts rescinded."

In this case, too, the gifts were made *after* the execution of the will. The will was made in January, 1885, and the gift, as here, of *United States registered bonds* was made in April of the same year, and the gift of certain railroad stock was made more than a year after the gift of the bonds, and *the mother*, after the death of the daughter, seeks to have the gifts set aside, and the court holds that it cannot be done.

In Leddel's Ex't'r *vs.* Starr, 20 N. J. Eq., 274, the court say (page 287)—*just as occurred in this case:*

"*But the true consideration was, as clearly appears from the evidence, a strong desire on the part of Mrs. Leddel to make up to Mrs. Starr a great inequality in the provisions of the will of her husband, by which the share of Mrs. Starr was less than that of her other children by at least that amount.*"

Other equally strong cases will be found in—

Jenkins *vs.* Pye, 12 Peters, 241 (*ante*).
Conley *vs.* Nailor, 118 U. S., 127 (*ante*).
Mackall *vs.* Mackall, 135 U. S., 167 (*ante*).
Murray *vs.* Hilton, 8 D. C. App., 281.
Hepworth *vs.* Hepworth, 11 Eq. Cases, L. R., 10.
Saufley *vs.* Jackson, 16 Tex., 579 (*ante*).
Millican *vs.* Millican, 24 Tex., 426.
Eakle *vs.* Reynolds, 54 Md., 305.
Muir *vs.* Miller, 72 Iowa, 585.
Teegarden *vs.* Lewis, 145 Ind., 98 (*ante*).
Orr *vs.* Pennington, 93 Va., 268.

Now let me compare the present case with that of Taylor *vs.* Taylor *et al.*, *ante* (8 How., 183).

As previously mentioned by me, counsel for complainants lay great stress on the fact that Mrs. Moore thought best, when her mother expressed the wish to give her and her sister these bonds, to suggest to her (R., 123), "Don't you think it would be well to have something in writing regarding this matter, as we have had this previous trouble with Mary (the same sister-in-law, Mrs. Mary K. Campbell) about the legacy of $5,000?" And the argument is advanced that if this gift had been really made in the spirit and with the intention claimed for it, then nothing *in writing* would have been asked by the daughter of the mother. As a general proposition this is undoubtedly true, but the facts in no two cases are exactly alike, and, as was said by this court in the case of Conley *vs.* Nailor, 118 U. S., 127, 133, "cases like the present must each stand upon its own facts," and I respectfully submit that here these daughters, *knowing from previous experience* with whom they might hereafter have to deal, took the wise course and had their mother do again what she herself had found it *necessary* to do only two or three years before to convince this same daughter-in-law that Mrs. Russell had not only had nothing to do with Mr. Campbell

leaving her and her sister, by his will, $5,000 each, but as a matter of fact it was done even "without the knowledge of either of them" (R., 59).

What the result was, when the daughter-in-law received that emphatic letter from her mother-in-law, is evidenced by her own letter to Mrs. Russell of June 17, 1882 (R., 133), which she at first denied having written (R., 49), in which she says:

"*As soon as I felt that you had been falsely accused I began to make reparation by showing your mother's statement*," &c.

How natural, then, with the recollection of all those recent unpleasant events in her mind, and remembering what had then been found necessary to remove the former "false charge," was it for the daughter to make the suggestion she did to her mother, and how equally natural was it for the mother to respond (R., 123), "Oh, yes; certainly, by all means."

How entirely different are the facts and surrounding circumstances in the Taylor case, which are briefly these:

A young woman, who "had little more than attained her majority" when the transaction complained of took place, seeks herself to have set aside a deed made by her in trust for the benefit of her parents, "who once had lived in affluence and luxury," but had, "by commercial reverses, been brought to indigence," which deed had been executed by her to one executor for the benefit of the wife of another executor "on no real consideration," and the recitals thereof the evidence shows to be "palpably false," and made, too, "under extreme urgency and harsh treatment," but for the object "of reconciling her parents to her marriage they had theretofore opposed," and by which conveyance she had despoiled herself of "every description of property derived from her uncle" (and which was all, it seems, that she possessed). The mother, Julia Scorborough, who, the complain-

ant charges, had "importuned and urged" her to make the deed and who took benefit thereunder, and through whose "urgent importunity" she had written the letter addressed to her father, set out in the bill, as well as Joseph Scorborough, a brother, who had, unknown to the complainant, signed her name to a consent order appointing a new trustee under this deed in trust for the mother (rendered necessary by the death of the former trustee, William Taylor), *never answered the bill*, and "against which two parties an order was obtained taking the bill *pro confesso*." So *the mother* (the father in the meantime having died) *and the brother, the very persons who knew better than any one else whether or not these allegations made by the complainant, charging them with fraud and duress, were true, by their silence confess to the truth of the charges made against them by this daughter and sister!*

Accompanying such a transaction as this, and under these peculiar conditions, there was filed with the answer of Robert M. Goodwin, the substituted trustee under the deed in trust, the letter in question, written by this girl to her father, purporting to give the reasons actuating her in making the deed in question, in which "she accuses herself, or fancies herself accused, of unworthy motives or conduct, because she had been the object of her uncle's affection."

This court, very properly, under all of these circumstances, ask: "Can we accredit the probability of a formal diplomatic communication from a daughter, just grown, to her father, residing under the same roof, to justify an act which they both believed it a sacred duty to perform?" It was ordered that the deed be set aside and the property reconveyed to the grantor.

The facts and surrounding circumstances in the two cases are not at all similar: There was no reason *for any such letter* from Miss Scorborough to her father; *there was every reason, in view of past experience, for some statement from Mrs. Campbell* as to the facts attending the giving of these bonds

to her daughters, and which bonds, the proof shows, formed quite a small part of her large estate.

The mother and the brother of Mrs. Taylor, in effect, *confess that the charges of fraud, &c., made against them were true.* Mr. and Mrs. Moore and Mr. and Mrs. Russell all, most positively, deny, both in their answers and their testimony, that they ever made any suggestion, even, to Mrs. Campbell about the giving of these bonds.

IV.

LACHES.

Having now considered the case on its merits, I desire, in conclusion, to call the attention of the court to another subject, before referred to by me, growing out of the facts as *alleged in the bill and developed by the testimony of the complainants.*

This suit was filed *April* 16, 1896, to set aside a gift, *inter vivos, alleged in the bill* to have been made by a mother to her only two children *on "the 6th day of October*, 1885," nearly *eleven years after the transaction admittedly took place*, and about *three years after the death of the donor. What reasons do the complainants give in their bill or their testimony for this delay? None whatever!*

Much stress was laid by counsel in their arguments below as to why Mrs. Campbell should have done this *after* making her will. May I ask in return, *Why did not the complainants in her lifetime ask her why she did it? Why did they wait till after her death before making the inquiry* if they *really* wanted to know the truth?

As is said by this court in Hammond *vs.* Hopkins (*ante*), "the counter-presumption now arises that there has been delay *with a view* to have the undue advantage of evidence

on one side no longer capable of explanation on the other," and see *ante*.

Leddel's Ex't'r *vs.* Starr, 20 N. J. Eq., 274, 287.
Sayre *vs.* Hughes, 5 Eq. Cases, L. R., 376.
Teakel, ex'tr'x, *vs.* McAtee, 156 Pa., 600.

In the recent case of Orr *vs.* Pennington, 93 Va., 268 (*ante*), we find somewhat the same question as to laches as that involved in the present case, being a bill to set aside a deed (and the present transfer, as before stated, has about all of the solemnities of such an instrument) on the ground of undue influence. The court say (page 270):

> "The conveyance was made in April, 1883, and the grantor died in May following; the grantor took possession of the property under the deed, held and occupied it until his death, in August, 1888. In May, 1892, this suit was instituted—*nine years* after the conveyance was made and the right of the appellant accrued. *No reason is assigned in the bill why the suit was not instituted earlier. In the proof* and in the argument *the claim is made* that, whilst the appellant believed before his father's death that the grantee had unduly influenced him to make the deed, he was unable, until recently before the suit was brought, to get the necessary evidence to show this," &c.

The court below dismissed the bill, and the supreme court of appeals unanimously affirmed that decree.

In the present case "no reason is assigned in the *bill*," none "in the *proof*," and none even "in the argument" below.

In the case of Lansdale *vs.* Smith, 106 U. S., 391 (*ante*), which was an appeal from a decree of the supreme court of this District and which this court unanimously affirmed, *and the appellant was represented therein by the same counsel who filed the pressnt bill in equity*, the court say (page 394), quoting from its former opinion in Badger *vs.* Badger, 2 Wall., 87, 95 (*ante*):

"A party who makes an appeal to the conscience of the chancellor *should set forth in his bill, specifically, what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case on his own showing without inquiry whether there is a demurrer or formal plea of the statute of limitations contained in the answer. These principles are decisive of the case before us.*"

Yet, in the face of this opinion, *the same counsel* prepares and files the present bill in equity, and not only ignores what this court then informed him, and again reiterated in Richards *vs.* Mackall, 124 U. S., 183, 187; Hammond *vs.* Hopkins, 143 U. S., 224, 252 (*ante*), and Felix *vs.* Patrick, 145 U. S., 317, 331, 332, was *necessary to be set out in his bill*, but *the evidence of his own witnesses proves, before he closes his testimony-in-chief*, that the chief actor herein, the daughter-in-law, representing the deceased son, knew all about this gift "a very short time" after it was made, in October, 1885 (R., 57), and the *nominal* parties in interest, her children, are not produced at all to tell when they were first informed of the transaction!

This well-recognized principle of equity is firmly established by almost numberless authorities:

Sullivan *vs.* Railroad Co., 94 U. S., 806.
Brown *vs.* County of Buena Vista, 95 U. S., 157.
Speidel *vs.* Henrie, 120 U. S., 377.
Parker *vs.* Dacres, 130 U. S., 43.
Mackall *vs.* Casilear, 137 U. S., 556.
Galliher *vs.* Cadwell, 145 U. S., 368, 372, 373.
Thorn Wire Hedge Co. *vs.* Washburn and Moen Manf. Co., 159 U. S., 423, 444.
Willard *vs.* Wood, 164 U. S., 502.
Whitney *vs.* Fox, 166 U. S., 637.
Penn Mut. Life Ins. Co. *vs.* Austin, 168 U. S., 685.

I therefore respectfully submit that *both on the facts and law, as well as on the merits and pleadings*, the complainants have *totally failed* to make out any case that entitles them to the relief prayed for in their bill, and, if the court is of opinion that it has jurisdiction, that the decree of the Court of Appeals of the District of Columbia, affirming the decree of the supreme court of said District, should be affirmed.

CHAS. H. CRAGIN,

Attorney for Appellees, Christiana V. Moore, Fred. L. Moore, Julia A. Russell, Alex. W. Russell.

TOWSON *v.* MOORE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 198. Argued January 25, 26, 1899. — Decided February 20, 1899.

In the case of a child's gift of its property to a parent, the circumstances attending the transaction should be vigilantly and carefully scrutinized by the court, in order to ascertain whether there has been undue influence in procuring it; but it cannot be deemed *prima facie* void: the presumption is in favor of its validity; and, in order to set it aside, the court must be satisfied that it was not the voluntary act of the donor.

The same rule as to the burden of proof applies with equal, if not greater, force to the case of a gift from a parent to a child, even if the effect of the gift is to confer upon a child, with whom the parent makes his home and is in peculiarly close relations, a larger share of the parent's estate than will be received by other children or grandchildren.

The rule, that successive and concurrent decisions of two courts in the same case upon a mere question of fact are not to be reversed unless clearly shown to be erroneous, is equally applicable in equity and in admiralty.

THE case is stated in the opinion.

Mr. Franklin H. Mackey and *Mr. A. H. Garland* for appellants.[1] *Mr. R. C. Garland* was on their brief.

Mr. Charles H. Cragin for appellees.

MR. JUSTICE GRAY delivered the opinion of the court.

[1] See Vol. 172, p. 651.

This was a bill in equity, filed April 16, 1896, in the Supreme Court of the District of Columbia, by children of Leonidas C. Campbell, the son of William H. Campbell, against the two daughters of William H. Campbell, and against their husbands, who were also executors of the wills of William H. Campbell and of Mary I. Campbell, his widow and residuary devisee and legatee, to set aside a gift made by her to their two daughters, of thirteen United States bonds for $1000 each, (five bearing interest at four and a half per cent, and eight at four per cent,) as having been obtained from her by undue influence of themselves and their husbands; and for an account, and for further relief.

After the filing of answers fully and absolutely denying the undue influence charged in the bill, and of a general replication, the case was heard upon pleadings and proofs; and a decree was entered dismissing the bill. The plaintiffs appealed to the Court of Appeals of the District of Columbia, which affirmed the decree. 11 App. D. C. 377. The plaintiffs then appealed to this court. The leading and undisputed facts of the case were as follows:

William H. Campbell, an old resident of the city of Washington, died May 21, 1881, leaving a will, dated March 16, 1878, and duly admitted to probate, by which, after reciting that he had provided for his son, Leonidas C. Campbell, by establishing him in business, he gave a legacy of $5000 to each of his two daughters, Julia, wife of Alexander W. Russell, and Christiana, wife of Frederick L. Moore, and an annuity of $500 for life to his sister, Eloise A. Campbell; and devised and bequeathed all the rest and residue of his estate in fee to his wife, Mary I. Campbell, or, if she should not survive him, to his three children as tenants in common, the children of any child dying before him to take their parent's share; and appointed his son and his son in law Moore executors of his will. His son died August 15, 1878; and the testator, by a codicil dated September 7, 1878, and likewise admitted to probate, ratified and confirmed his will in all respects, except in appointing both his sons in law and one Maury executors thereof.

His wife and daughters survived him. His son had died intestate, and leaving a widow, Mary K. Campbell, and seven children, six of whom were the plaintiffs in this bill. The seventh child had died, leaving two children, who were made defendants, but were never served with process or otherwise brought into the case.

Upon the death of William H. Campbell, his executors, for the purpose of paying the annuity bequeathed by him to his sister, set apart the aforesaid United States bonds, of the par value of $13,000, and kept them intact during the life of the annuitant. She died October 1, 1885, and the bonds then became part of the residue of the estate bequeathed to his widow, Mary I. Campbell. On October 5, 1885, the bonds were transferred to her on the books of the Treasury Department; and on the next day, October 6, 1885, their market value then being about $15,000, she made a gift of them in equal shares to her two daughters, Mrs. Russell and Mrs. Moore.

After the death of her husband in 1881, Moore was her business agent; and she resided alternately with one or the other of her two daughters, living on affectionate and confidential terms with them and their husbands; and at the times of the gift in question, and of her death, was at the house of Mr. and Mrs. Moore in Georgetown. She died August 6, 1893, aged ninety-one years, and leaving a will, dated May 26, 1882, and duly admitted to probate, by which, after some small legacies, she devised and bequeathed all the residue of her estate, in equal thirds, to her two daughters and the seven children of her deceased son; and appointed her sons in law Russell and Moore executors of her will.

It was contended by the plaintiffs that the Court of Appeals erred in holding that the burden of proving undue influence was upon them; and it was argued that, by reason of the confidential relations between the donor and the donees, the burden of proof was shifted upon the latter to prove the validity of the gift of the bonds. But the ruling of the Court of Appeals in this respect is supported by the decisions of this court, as will appear by an examination of those decisions.

In the leading case of *Jenkins* v. *Pye*, 12 Pet. 241, in which this court, at January term 1838, declined to set aside, for undue influence, a deed of real estate made by a daughter, shortly after coming of age, to her father, the court, speaking by Mr. Justice Thompson, said: "The grounds mainly relied upon to invalidate the deed were, that being from a daughter to a father rendered it, at least *prima facie*, void; and if not void on this ground, it was so because it was obtained by the undue influence of paternal authority. The first ground of objection seeks to establish the broad principle that a deed from a child to a parent, conveying the real estate of the child, ought, upon considerations of public policy growing out of the relations of the parties, to be deemed void; and numerous cases in the English chancery have been referred to, which are supposed to establish this principle." "It becomes the less necessary for us to go into a critical examination of the English chancery doctrine on this subject, for, should the cases be found to countenance it, we should not be disposed to adopt or sanction the broad principle contended for, that the deed of a child to a parent is to be deemed *prima facie* void. It is undoubtedly the duty of courts carefully to watch and examine the circumstances attending transactions of this kind, when brought under review before them, to discover if any undue influence has been exercised in obtaining the conveyance. But to consider a parent disqualified to take a voluntary deed from his child without consideration, on account of their relationship, is assuming a principle at war with all filial, as well as parental, duty and affection; and acting on the presumption that a parent, instead of wishing to promote the interest and welfare [of], would be seeking to overreach and defraud his child. Whereas the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view; and to presume the existence of circumstances conducing to that result." 12 Pet. 253, 254.

Mr. Justice Story (who had concurred in that judgment) in the last edition of his Commentaries on Equity Jurisprudence which underwent his revision, and which was published

in 1846, after his death, stated the doctrine on the subject as follows: "The natural and just influence which a parent has over a child renders it peculiarly important for courts of justice to watch over and protect the interests of the latter; and therefore all contracts and conveyances, whereby benefits are secured by children to their parents, are objects of jealousy, and if they are not entered into with scrupulous good faith, and are not reasonable under the circumstances, they will be set aside, unless third persons have acquired an interest under them; especially where the original purposes for which they have been obtained are perverted, or used as a mere cover. But we are not to indulge undue suspicions of jealousy, or to make unfavorable presumptions as a matter of course in cases of this sort." And he supported this statement by large quotations from the opinion of Mr. Justice Thompson in *Jenkins* v. *Pye*. 1 Story Eq. Jur. (4th ed.) § 309.

In *Taylor* v. *Taylor*, 8 How. 183, decided at January term 1850, after the deaths of Justices Thompson and Story, the opinion of Mr. Justice Thompson in *Jenkins* v. *Pye* and the passage in Mr. Justice Story's Commentaries (omitting the last clause, which was not in the earlier editions,) were quoted by Mr. Justice Daniel as laying down the true rule upon the subject. While some expressions of that learned judge might seem to construe those authorities too strongly in favor of presuming undue influence, the decision in that case, setting aside a deed made by a daughter to her father soon after her coming of age, ultimately proceeded upon overwhelming proof of undue influence, derived in part from the testimony of witnesses to significant facts; in part from evidence conclusively showing that nearly all the statements in the deed itself were utterly false; and in part from a letter, written to the father by the daughter, a few days before executing the deed, and while they were living under the same roof, which, as the court declared, clearly appeared upon its face to be "a fabrication, designed to conceal the very facts and circumstances which it palpably betrays," and "not the production of an inexperienced girl, but of a far more practised and deliberate author."

It has since, more than once, been recognized by this court

that "the influence for which a will or deed will be annulled must be such as that the party making it has no free will, but stands *in vinculis*." *Conley* v. *Nailor*, (1886) 118 U. S. 127, 134; *Ralston* v. *Turpin*, (1889) 129 U. S. 663, 670. See also *Mackall* v. *Mackall*, (1890) 135 U. S. 167, 172, 173.

In *Ralston* v. *Turpin*, just cited, in which the object of the bill was to set aside deeds made to an agent by his principal, this court, speaking by Mr. Justice Harlan, recognized the rule of law that "gifts procured by agents, and purchases made by them, from their principals, should be scrutinized with a close and vigilant suspicion;" and conceded that in the case then before the court the agent held such relations, personal and otherwise, to the principal, as would enable him to exercise great influence over the latter in respect to the mode in which his property should be managed; that the principal trusted the agent's judgment as to matters of business more than the judgment of any other man; and that he had an abiding confidence in the agent's integrity, as well as in his desire to protect his interests. Notwithstanding all this, the bill was dismissed, because the plaintiff had failed to show that the deeds were obtained by undue influence, but, on the contrary, it appeared by the great preponderance of the evidence that "although their execution may have been induced, not unnaturally, by feelings of friendship for, and gratitude to, the defendant Turpin, the grantor acted upon his own independent, deliberate judgment, with full knowledge of the nature and effect of the deeds. It was for the donor, who had sufficient capacity to take a survey of his estate, and to dispose of it according to an intelligent, fixed purpose of his own, regardless of the wishes of others, to determine how far such feelings should control him when selecting the objects of his bounty." 129 U. S. 675–677.

In *Mackall* v. *Mackall*, above cited, in which it was attempted to set aside a deed from a father to his son, it appeared that for twenty years the father and mother had been separated, and this son had remained with the father, taking his part, and assisting him in his affairs, and the other children had gone with the mother and taken her part in the

family differences. This court, in the opinion delivered by Mr. Justice Brewer, speaking of the contention that the execution of the deed was induced by undue influence, said: "In this respect, reference was made to the long intimacy between father and son, the alleged usurpation by the latter of absolute control over the life, habits and property of the former, efforts to prevent others during the last sickness of the father from seeing him, and the subjection of the will of the father to that of the son, manifest in times of health, naturally stronger in hours of sickness. A confidential relation between father and son is thus deduced, which, resembling that between client and attorney, principal and agent, parishioner and priest, compels proof of valuable consideration and *bona fides* in order to sustain a deed from one to the other. But while the relationships between the two suggest influence, do they prove undue influence?" In giving a negative answer to that question, the court affirmed the following propositions: "Influence gained by kindness and affection will not be regarded as undue, if no imposition or fraud be practised, even though it induce the testator to make an unequal and unjust disposition of his property in favor of those who have contributed to his comfort and ministered to his wants, if such disposition is voluntarily made. Confidential relations existing between the testator and beneficiary do not alone furnish any presumption of undue influence." "That the relations between this father and his several children, during the score of years preceding his death, naturally inclined him towards the one and against the others is evident, and to have been expected. It would have been strange if such a result had not followed; but such partiality towards the one, and influence resulting therefrom, are not only natural, but just and reasonable, and come far short of presenting the undue influence which the law denounces. Right or wrong, it is to be expected that a parent will favor the child who stands by him, and give to him, rather than the others, his property. To defeat a conveyance under those circumstances, something more than the natural influence springing from such relationship must be shown; imposition, fraud, importunity, duress, or something

of that nature, must appear; otherwise, that disposition of property which accords with the natural inclinations of the human heart must be sustained." 135 U. S. 171–173.

The principles established by these authorities may be summed up as follows: In the case of a child's gift of its property to a parent, the circumstances attending the transaction should be vigilantly and carefully scrutinized by the court, in order to ascertain whether there has been undue influence in procuring it; but it cannot be deemed *prima facie* void; the presumption is in favor of its validity; and, in order to set it aside, the court must be satisfied that it was not the voluntary act of the donor. The same rule as to the burden of proof applies with equal, if not greater force to the case of a gift from a parent to a child, even if the effect of the gift is to confer upon a child, with whom the parent makes his home and is in peculiarly close relations, a larger share of the parent's estate than will be received by other children or grandchildren.

Applying these principles to the case at bar, it is beyond doubt that the relations in which Mary I. Campbell stood to her daughters and their husbands afford no ground for putting upon them the burden of disproving undue influence.

Upon the question whether undue influence was in fact exercised, the record contains a mass of conflicting testimony, which is satisfactorily considered in the opinion of the Court of Appeals, and which it would serve no useful purpose to discuss anew.

A series of decisions of this court has established the rule, that successive and concurrent decisions of two courts in the same case, upon a mere question of fact, are not to be reversed, unless clearly shown to be erroneous. This rule, more often invoked in admiralty cases, is yet equally applicable to appeals in equity. *Dravo* v. *Fabel*, 132 U. S. 487, 490; *Stuart* v. *Hayden*, 169 U. S. 1, 14; *Baker* v. *Cummings*, 169 U. S. 189, 198.

There is one document, however, in the record, which was the subject of so much argument at the bar, that a brief notice

of it, and of the circumstances under which it was drawn up, will not be out of place.

The defendants, at the hearing, introduced in evidence a writing signed by Mary I. Campbell, and in the following terms: "Georgetown, D. C., October 6, 1885. I have to-day voluntarily, without suggestion from any one, given to my two daughters the 4½ and 4 per cent United States bonds coming to me from the estate of my husband, amounting to thirteen thousand dollars at par, thus equalling their share with the amount received by their brother and his family." There was evidence tending to show that this writing was drawn up and signed at the request of Mrs. Moore, and delivered to her, on the day of its date, and had since been kept by her.

It was argued, in behalf of the plaintiffs, that the procuring of this paper, containing the unusual and suspicious declaration that the gift of the bonds was made "voluntarily, without suggestion from any one," together with the long concealment of the paper from the plaintiffs, was strong evidence of an intent to back up a fraudulent transaction.

But this argument is fully met by evidence that the reason for the execution of this paper was that, three or four years before, Mary K. Campbell, the mother of the plaintiffs, had made an unfounded charge that Mrs. Moore had by undue influence procured the insertion of the legacies to herself and her sister in their father's will; and had only desisted from that charge upon receiving from Mary I. Campbell a written statement that it was "false in every particular." Under such circumstances, no suspicion of undue influence can arise out of the execution of the writing of October 6, 1885; or out of its not having been disclosed to the plaintiffs, which may well have been in order to prevent stirring up anew a family quarrel. In this respect, as in most others, the case wholly differs from that of *Taylor* v. *Taylor*, 8 How. 183, on which the plaintiffs rely.

Upon a careful examination of the whole evidence, aided by the able and thorough arguments of counsel, no sufficient ground appears for reversing the decree dismissing the bill.

Decree affirmed.